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Supreme Court U.S.
FILED
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No. 01-1015

In The
Supreme Court of the United States

VICTOR MOSELEY and CATHY MOSELEY,
d/b/a VICTOR'S LITTLE SECRET,

Petitioners,

v.

V SECRET CATALOGUE, INC.,
VICTORIA'S SECRET STORES, INC., and
VICTORIA'S SECRET DIRECT, LLC,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

JOINT APPENDIX
VOL. I, PAGES 1 to 132

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6/22/98	1	COMPLAINT filed. Sv. to Counsel. (Summons(es) issued) filing fee pd – receipt # 21018 (ak) [Edit date 06/23/98]
7/17/98	2	MOTION by defendant Victor Moseley, defendant Cathy Moseley to extend time to answer to 8/5/98; order tendered (ak) [Entry date 07/20/98]
8/3/98	3	ORDER by Chief Judge Charles R. Simpson III granting dfts motion to extend time to answer to 8/5/98 [2-1] (cc: all counsel) (mc)
8/4/98	4	ANSWER by defendant to [1-1]; jury demand (tc) [Entry date 08/05/98]
9/22/98	12	NOTICE by plaintiff V Secret Catalogue, plaintiff Victoria Secret Stor, plaintiff Victoria Secret Cata to take deposition of Cathy Moseley on 10/29/98 (ak) [Entry date 09/23/98]
9/22/98	13	NOTICE by plaintiff V Secret Catalogue, plaintiff Victoria Secret Stor, plaintiff Victoria Secret Cata to take deposition of Victor Moseley on 10/29/98 (ak) [Entry date 09/23/98]
10/8/98	15	MOTION by plaintiff V Secret Catalogue, plaintiff Victoria Secret Stor, plaintiff Victoria Secret Cata for attorney Frank J. Colucci, Courtney Wilson Monahan, W. Brant Mossop, G. Mathew Lombard to appear pro hac vice; Memorandum in Support; order tendered – FILING FEE PAID,

REC#314199, 314198 (ak) [Entry date 10/13/98]

10/14/98 16 ORDER by Chief Judge Charles R. Simpson III granting motion for attorney – Frank J. Colucci, Courtney Wilson Monahan, W. Brant Mossop, G. Mathew Lombard to appear pro hac vice [15-1] (cc: all counsel) (ak)

10/26/98 17 MEDIATION BRIEF FILED by defendant Victor Moseley, defendant Cathy Moseley (ak)

11/2/98 18 ANSWER TO INTERROGATORIES by defendant Victor Moseley, defendant Cathy Moseley (ak) [Entry date 11/05/98]

11/2/98 19 RESPONSE TO REQUEST by defendant Victor Moseley, defendant Cathy Moseley for production of documents (ak) [Entry date 11/05/98]

11/18/98 20 DEPOSITION of Victor Moseley taken on the following date(s): 10/29/98 (ak)

11/18/98 21 DEPOSITION of Cathy Moseley taken on the following date(s): 10/29/98 (ak)

11/25/98 22 NOTICE by defendant Victor Moseley, defendant Cathy Moseley to take deposition of Timothy Lyons on 12/8/98 (ak) [Entry date 11/30/98]

11/25/98 23 NOTICE by defendant Victor Moseley, defendant Cathy Moseley to take deposition of Jill Beraud on 12/14/98 (ak) [Entry date 11/30/98]

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1/20/99 – REMARK: Agreed Protective Order tendered by parties. (ak)

1/22/99 27 AGREED PROTECTIVE ORDER GRANTING CONFIDENTIALITY FOR DOCUMENTS & MATERIALS by Chief Judge Charles R. Simpson III: Parties shall comply as set forth in order. (cc: all counsel) (ak)

4/19/99 28 MOTION by defendant Cathy Moseley, defendant Victor Moseley for summary judgment; Memorandum in Support; order tendered (FILED IN BROWN FOLDER DUE TO ATTACHMENTS) (ak)

4/26/99 29 MOTION by plaintiff Victoria Secret Cata, plaintiff Victoria Secret Stor, plaintiff V Secret Catalogue to extend dispositive motions from 4/21/99 to 5/5/99; order tendered (seal)

4/27/99 30 ORDER by Chief Judge Charles R. Simpson III granting motion to extend dispositive motions from 4/21/99 to 5/5/99 [29-1]; dispositive motion ddl set for 5/5/99 (cc: all counsel) (ak)

5/7/99 31 RESPONSE by plaintiff Victoria Secret Cata, plaintiff Victoria Secret Stor, plaintiff V Secret Catalogue to motion for summary judgment [28-1]; order tendered (FILED IN BROWN FOLDER) (ak)

5/7/99 32 CROSS-MOTION by plaintiff Victoria Secret Cata, plaintiff Victoria Secret Stor,

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5/7/99 33 EXHIBITS to cross-motion for sumjgm. filed by Pla. (FILED IN BROWN FOLDER) (ak)

5/18/99 34 REPLY by defendant Cathy Moseley, defendant Victor Moseley to response to motion for summary judgment [28-1] (ak) [Entry date 05/19/99]

6/16/99 36 RESPONSE/REPLY by defendant Cathy Moseley, defendant Victor Moseley to response to motion to strike Pla. cross-motion for sumjgm. [34-1], motion to strike Pla. resp. to motion for sumjgm. [34-1] (ak) [Entry date 06/17/99]

10/1/99 37 MOTION by defendant to submit on the record; order tendered (mc)

2/9/00 38 MEMORANDUM, OPINION: by Chief Judge Charles R. Simpson III re [34-1], re [34-1], re [32-1], re [28-1], the dft. motion for sumjgm. will be granted be separate order as to Cnts. I, II, IV and denied as to Cnt. III. Pla. motion for sumjgm. on cnt. III of the cmp. will be granted and dft. will be enjoined from the use of the mark "Victor's Little Secret" be separate order. (cc: all counsel) [Entry Date: 2/9/00] (ak)

2/9/00 39 ORDER by Chief Judge Charles R. Simpson III denying motion to strike Pla. cross-motion for sumjgm. [34-1], denying motion to strike Pla. resp. to motion for sumjgm.[34-1], granting motion for summary judgment

[32-1] as to Ct 3 of the cmp., granting in part, denying in part [28-1] motion for summary judgment granted as to cts. I, II & IV are dism. w/prej. The dfts. are hereby enjoined from using the designation of "Victor's Secret" or "Victor Little Secret" or any mark similar thereto, or any reproduction, counterfeit, copy or colorable imitation of Pla. trademark. terminating case (cc: all counsel) [Entry Date: 2/9/00] (ak)

3/10/00 40 NOTICE OF APPEAL by defendants Cathy Moseley and Victor Moseley to USCA, decision [39-2], [38-1] (cc: all counsel) receipt # 317368 (mc)

3/20/00 41 DESIGNATION of Record on Appeal re [40-1] (ak)

10/16/01 42 MANDATE from USCA affirming the decision of the District Court [40-1] (mc) [Entry date 10/17/01]

1/25/02 43 NOTICE petition for writ of certiorari filed 1/2/02 (tbur)

4/23/02 – REMARK ltr advising petition for writ of certiorari granted (tbur) [Entry date 04/24/02]

In the United States Court of Appeals for the Sixth Circuit

3/16/00 Civil Case Docketed. Notice filed by Appellant Victor Moseley, Appellant Cathy Moseley. Transcript needed: n (cb)

3/16/00	BRIEFING LETTER SENT setting briefing schedule: appellant brief due 4/25/00; appellee brief due 5/25/00; reply brief due 6/8/00; appendix due 6/15/00; final appellant brief due 7/6/00; final appellee brief due 7/6/00; . (cb)
3/17/00	TRANSCRIPT ORDER FORM filed by Don A. Pisacano for Appellant Cathy Moseley, Appellant Victor Moseley: No hearings held in District Court. [00-5320] [2118816-1] (blh)
3/17/00	Briefing Letter Sent by CONFERENCE ATTORNEY'S OFFICE resetting briefing schedule: appellant brief now due 5/5/00; appellee brief now due 6/5/00; reply due 6/19/00; appendix now due 6/26/00 appellant final brief now due 7/17/00; appellee final brief now due 7/17/00 [00-5320] final reply brief now due 7/17/00; . (trm)
3/27/00	APPEARANCE filed by Attorney John E. Spainhour for Appellant Cathy Moseley, Appellant Victor Moseley [00-5320] (jmb)
3/29/00	APPEARANCE filed by Attorney Don A. Pisacano for Appellant Cathy Moseley, Appellant Victor Moseley [00-5320] (cb)
3/30/00	APPEARANCE filed by Attorney Frank J. Colucci for Appellee Victoria's Secret, Appellee Victoria's Secret, Appellee V Secret Catalogue [00-5320] (cb)
3/30/00	APPEARANCE filed by Attorney Reford H. Coleman for Appellee Victoria's Secret, Appellee V Secret Catalogue [00-5320] (cb)

5/5/00	Request to require oral argument filed by Don A. Pisacano for Appellants Cathy Moseley, Victor Moseley [00-5320] (ds)
5/8/00	PROOF BRIEF filed by Don A. Pisacano for Appellants Cathy Moseley, Victor Moseley. Certificate of service date 5/5/00 Number of Pages: 34. [00-5320] _ (ds)
5/25/00	BRIEFING LETTER SENT requesting brief corrections from Don A. Pisacano because binding, references, [illegible]nation of appendix contents. Corrections due: 6/8/00, resetting briefing schedule: appellee brief now due 7/10/00; reply brief now due 7/24/00; appendix now due 7/31/00; all final briefs now due 8/21/00. [00-5320] . (ds)
6/12/00	Corrected appellant proof brief filed by Don A. Pisacano. Copies: 1. Certificate of Service date 6/8/00 [00-5320] (ds)
7/10/00	PROOF BRIEF filed by Frank J. Colucci for Appellee Victoria's Secret, Appellee Victoria's Secret, Appellee V Secret Catalogue. Certificate of service date 7/7/00. Number of Pages: 39+9. [00-5320] _ (jmb)
7/10/00	Request to require oral argument filed by Frank J. Colucci for Appellee Victoria's Secret, Appellee Victoria's Secret, Appellee V Secret Catalogue [00-5320] (jmb)
8/1/00	APPENDIX filed by Don A. Pisacano for Appellant Cathy Moseley, Appellant Victor Moseley. Copies: 5. Certificate of service date 7/31/00 [00-5320] (lak)

8/14/00	FINAL BRIEF filed by Frank J. Colucci for Appellees Victoria's Secret, Victoria's Secret, V Secret Catalogue. Copies: 7. Certificate of service date 8/11/00 . Number of Pages: 48. [00-5320] (lak)
8/14/00	Request to require oral argument filed by Frank J. Colucci for Appellees Victoria's Secret, Victoria's Secret, V Secret Catalogue [00-5320] (lak)
8/22/00	FINAL BRIEF filed by Don A. Pisacano for Appellant Cathy and Victor Moseley. Copies: 7. Certificate of service date 8/21/00 Number of Pages: 36. [00-5320] (lak)
8/22/00	Request to require oral argument filed by Don A. Pisacano for Appellant Cathy Moseley and Victor Moseley [00-5320] (lak)
4/16/01	Oral argument date set for June 14, 2001 in court room 403. Notice of argument sent to counsel. [00-5320] (rld)
6/14/01	CAUSE ARGUED on 6/14/01 by Don A. Pisacano for Appellant Cathy Moseley, Appellant Victor Moseley, Frank J. Colucci for Appellee Victoria's Secret, Appellee Victoria's Secret, Appellee V Secret Catalogue before Judges Jones, Daughtrey, Cole. [00-5320] (srw)
7/30/01	OPINION filed: AFFIRMED the judgment of the district court and thus uphold the grant of summary judgment to the plaintiff's in this case, base upon their claim under the Federal Trademark Dilution Act. Decision for publication pursuant to local rule 206 [00-5320] . Nathaniel R. Jones, Circuit Judge, Martha C.

	Daughtrey, Authoring Judge, R. G. Cole, Circuit Judge. (yh)
7/30/01	JUDGMENT FILED: AFFIRMED. (yh)
8/13/01	Appellant MOTION filed to extend time to 8/27/01 to file a petition for rehearing en banc. Motion filed by James R. Higgins for Appellants Cathy Moseley, Victor Moseley. Certificate of service date 8/13/01 [00-5320] (blh)
8/14/01	APPEARANCE filed by Attorney Scot Duvall for Appellant Cathy Moseley, Appellant Victor Moseley [00-5320] (cb)
8/14/01	APPEARANCE filed by Attorney James R. Higgins for Appellant Cathy Moseley, Appellant Victor Moseley [00-5320] (cb)
8/14/01	RULING granting motion to extend time to 8/27/01 to file a petition for rehearing en banc [2406620-1] filed by James R. Higgins Jr. . Petition to be filed by 8/27/01. [00-5320] (blh)
8/27/01	PETITION for en banc rehearing filed by James R. Higgins for Appellants Cathy Moseley, Victor Moseley. Certificate of service date 8/25/01. [00-5320] (blh)
10/4/01	ORDER filed denying petition for en banc rehearing [2414284-1] filed by James R. Higgins Jr. [00-5320]. Nathaniel R. Jones, Martha C. Daughtrey, R. G. Cole, Circuit Judges. (blh)
1/18/02	U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Appellant Victor Moseley, Appellant Cathy Moseley . Filed in the Supreme Court on 01-02-

02, Supreme Ct. case number: 01-1015. [00-5320] (swh)

4/19/02 U.S. Supreme Court letter filed granting petition for writ of certiorari [2489867-1] filed by Victor Moseley, Cathy Moseley [00-5320]. Filed in the Supreme Court on 4/15/02 (yh)

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[Names and Addresses Omitted in Printing]

February 25, 1998

VIA FEDEX

Mr. Victor Mosley
#20 300 Sycamores Street
Houchens Plaza
Elizabethtown, Kentucky 42701

RE: Our File D68-003

Dear Mr. Mosley:

We are Intellectual Property Counsel to The Limited Inc., including its wholly-owned subsidiaries Victoria's Secret Stores and Victoria's Secret Catalogue (collectively "Victoria's Secret").

Victoria's Secret owns and operates the well-known VICTORIA'S SECRET stores located throughout the United States as well as the well-known VICTORIA'S SECRET catalog world-wide. Victoria's Secret has been in business in the United States for many years and the name VICTORIA'S SECRET has become exclusively associated in the minds of the public with our client and its merchandise.

In addition, VICTORIA'S SECRET is a registered trademark with the United States Patent and Trademark

Office. Victoria's Secret also owns the VICTORIA'S SECRET catalog which is distributed throughout the United States. As a result, the VICTORIA'S SECRET name and trademark has acquired widespread public recognition and goodwill in the United States and is an extremely important and valuable asset of our client.

We have recently learned that you and Ms. Cathy Mosley own and operate a retail business named VICTOR'S SECRET which sells lingerie, dresses and novelties.

In our opinion and that of our client, your choice of VICTOR'S SECRET for a retail clothing store, in particular a store that specializes in lingerie, is likely to cause confusion with our client's well-known VICTORIA'S SECRET mark and name by suggesting a connection or association between you and Victoria's Secret. In addition, your use of VICTOR'S SECRET is likely to dilute the distinctiveness of our client's VICTORIA'S SECRET mark and name.

Accordingly, we request that you discontinue any and all use the mark VICTOR'S SECRET and any variations thereof immediately.

We look forward to hearing from you promptly in this matter in any event, no later than by *Friday, February 27, 1998*. Otherwise, we shall have no alternative but to take all appropriate further action to protect Victoria's Secret's rights.

Very truly yours,

/s/ G M Lombard
G. Mathew Lombard

GML:he

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[Names and Addresses Omitted in Printing]

March 20, 1998

VIA FEDEX

Mr. Victor Mosley
#20 300 Sycamores Street
Houchens Plaza
Elizabethtown, Kentucky 42701

RE: Our File D68-003

Dear Mr. Mosley:

Further to our letter of February 25th and our subsequent telephone conversations, in order for Victoria's Secret to consider whether your proposed name change to VICTOR'S LITTLE SECRETS and Hand Design would be acceptable, it must have the following information:

1) photographs of the interior and exterior of your store;

2) a drawing, illustration or sketch of the manner in which you propose to use the name VICTOR'S LITTLE SECRETS and Hand Design on store signs, business cards, shopping bags, etc., including any advertisements, *i.e.*, newspaper or telephone yellow pages advertisements; and

3) a list of the products sold in your store, specifically, the type of lingerie that your store sells (*i.e.*, novelty lingerie or traditional lingerie) as well as samples.

We look forward to receiving the requested information at your earliest convenience so that we may forward it to Victoria's Secret for its review.

Sincerely yours,

/s/ Frank J. Colucci/GML
Frank J. Colucci

FJC/GML:ae

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF KENTUCKY

V SECRET CATALOGUE, INC., VICTORIA'S SECRET STORES, INC. and VICTORIA'S SECRET CATALOGUE, INC., Plaintiffs, v. VICTOR MOSELEY and CATHY MOSELEY d/b/a VICTOR'S LITTLE SECRET (formerly VICTOR'S SECRET), Defendants.	Civil Action No. 3:98CV 395-S **JURY DEMAND** (Filed Jun. 22, 1998)

COMPLAINT

Plaintiffs, V SECRET CATALOGUE, INC., VICTORIA'S SECRET STORES, INC. and VICTORIA'S SECRET CATALOGUE, INC., by their attorneys, as and for their complaint against defendants, VICTOR MOSELEY and CATHY MOSELEY, aver as follows:

THE PARTIES

1. Plaintiff, V SECRET CATALOGUE, INC. (hereinafter "V Secret"), is a Delaware corporation, having its principal office and place of business at 1105 North Market Street, Wilmington, Delaware 19801.

2. Plaintiff, VICTORIA'S SECRET STORES, INC. is a Delaware corporation, having its principal office and

place of business at Four Limited Parkway, Columbus Ohio 43216.

3. Plaintiff, VICTORIA'S SECRET CATALOGUE INC, is a Delaware corporation, having its principal office and place of business at 3425 Morse Crossing, Columbus, Ohio 43219.

4. Upon information and belief, defendants, VICTOR MOSELEY, owner, and CATHY MOSELEY, co-owner, d/b/a VICTOR'S LITTLE SECRET, formerly VICTOR'S SECRET, are sole proprietors having their principal office and place of business at #20 300 Sycamores Street, Houchens Plaza, Elizabethtown, Kentucky 42701.

JURISDICTION AND VENUE

5. Jurisdiction of this Court for the federal claims of trademark infringement, unfair competition and false designations of origin arises under the Trademark Laws of the United States, namely, the Trademark Act of July 5, 1946, commonly referred to as the Lanham Act, 15 U.S.C. §1051 *et seq.*, as amended by the Trademark Counterfeiting Act of 1984, Public Law 98-473, and is based upon 15 U.S.C. §1121 and 28 U.S.C. §§1331 and 1338(a). Jurisdiction of this Court for the related claims of common law trademark infringement and unfair competition is based upon pendent jurisdiction pursuant to 28 U.S.C. §1338(b) .

6. This Court has personal jurisdiction over defendants because they reside in the State of Kentucky in this judicial district; they are transacting and doing business in the State of Kentucky in this judicial district and they have committed tortious acts complained of hereinafter

within or without the State of Kentucky causing injury within the State of Kentucky in this judicial district.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b) and 1391(c).

FACTS COMMON TO ALL COUNTS

8. Plaintiff, V Secret, is the owner of the VICTORIA'S SECRET trademark, trade name and service mark worldwide, which it licenses to Victoria's Secret Stores, Inc. and Victoria's Secret Catalogue, Inc. (hereinafter collectively, "Victoria's Secret").

9. Victoria's Secret is engaged in the business of advertising, offering for sale and selling in its VICTORIA'S SECRET stores and through its VICTORIA'S SECRET catalogs a wide range of women's lingerie, apparel and accessories.

10. VICTORIA'S SECRET merchandise has been distributed nationwide since long prior to the date on which defendants began operating their VICTOR'S SECRET store and since at least as early as 1981.

11. Upon information and belief, the defendants began operating their VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET store in early 1998.

12. On or about June, 1977, Victoria's Secret, which term includes its predecessor-in-title, adopted and commenced using the trademark VICTORIA'S SECRET for women's outerwear, underwear and nightwear, including lingerie, robes, boxer shorts, dresses, shirts, pants, jackets and accessories.

13. The trademark VICTORIA'S SECRET has been duly registered in the United States Patent and Trademark Office under Registration No. 1,146,199 since January 1, 1981 and Registration No. 1,908,042 since August 1, 1995. True and accurate copies of said registrations are annexed hereto and made a part hereof as Exhibit A.

14. The aforesaid United States Registration No. 1,146,199 of the mark VICTORIA'S SECRET is in full force and effect, valid and incontestable, and V Secret is the owner thereof.

15. To date, Victoria's Secret has sold hundreds of thousands of garments bearing its VICTORIA'S SECRET trademark, as a result of which the public and the trade have come to identify and associate said trademark with Victoria's Secret as the source or origin of said goods and as a means whereby said goods are distinguished from similar goods or companies.

16. Since long prior to the acts of defendants, Victoria's Secret's sales of merchandise under the trademark VICTORIA'S SECRET have been substantial and the merchandise is widely and extensively advertised throughout the United States. In fact Victoria's Secret Stores, Inc.'s 1997 annual net sales exceeded $1.7 billion and Victoria's Secret Catalogue, Inc.'s 1997 annual net sales exceeded $734,000,000. Victoria's Secret regularly advertises its merchandise in its own catalogs, on television and in widely circulated magazines and major newspapers, including *Cosmopolitan*, *Vanity Fair* and *Glamour*, and engages in significant promotional activity.

17. As a result of extensive advertising, promotion and sales of Victoria's Secret merchandise, and because of the superior quality of Victoria's Secret's merchandise and

the extensive media coverage that Victoria's Secret and its products have received, the VICTORIA'S SECRET trademark has become famous and has come to be recognized by the public as exclusively identifying plaintiffs and plaintiffs' merchandise.

18. The trademark VICTORIA'S SECRET has acquired goodwill of inestimable value to Victoria's Secret.

19. Upon information and belief, notwithstanding said awareness, and by reason of the same, defendants own and operate a retail store, which sells, among other things, lingerie, under the trade name VICTOR'S LITTLE SECRET and which, upon information and belief, was formerly named VICTOR'S SECRET.

20. On February 25, 1998, attorneys for Victoria's Secret sent, *via* Federal Express, a letter (hereinafter "the First Letter") to defendants objecting to defendants' use of the name VICTOR'S SECRET and demanding that defendants discontinue their use of VICTOR'S SECRET as the name of their retail store. A copy of this letter is annexed hereto and made a part hereof as Exhibit B.

21. In response to the First Letter, defendant, VICTOR MOSELEY, telephoned Victoria's Secret's attorneys on February 26, 1998, at which time the possibility of amending the presentation of defendants' VICTOR'S SECRET name was discussed.

22. During the aforesaid telephone conversation, defendants agreed to send to Victoria's Secret's attorneys a proposed name change from VICTOR'S SECRET to VICTOR'S PRECIOUS SECRETS.

23. On March 20, 1998, plaintiffs' attorneys sent a second letter (hereinafter "the Second Letter"), also by

Federal Express, requesting photographs of the interior and exterior of defendants' store, specimens of defendants's merchandise, specimens of defendants' business cards, bags and letterhead and drawings of the proposed changes to the store name and store sign. A copy of this letter is annexed hereto and made a part hereof as Exhibit C.

24. On March 21, 1998, in response to the Second Letter, defendant, Victor Moseley, telephoned plaintiffs' attorneys to inform them of his objection to plaintiffs' attorneys' requests. Defendant, Victor Moseley, informed plaintiffs' attorneys that if plaintiffs' attorneys desired to see his store and specimens of his merchandise, plaintiffs' attorneys would have to visit the store in person. He also informed plaintiffs' attorneys that he had decided to change the name of his store to VICTOR'S LITTLE SECRET and would proceed to do so immediately. A photograph of defendants' store front is annexed hereto and made a part hereof as Exhibit D.

COUNT I

FEDERAL TRADEMARK INFRINGEMENT

25. Count I is an action for federal trademark infringement in violation of 15 U.S.C. §1114(1).

26. Plaintiffs repeat and incorporate herein by reference each and every one of the averments contained in paragraphs 1 through 24 of this complaint inclusive, with the same force and effect as if hereinagain set forth in detail.

27. Defendants have infringed plaintiffs' registered mark, VICTORIA'S SECRET, in interstate commerce or in

a manner affecting interstate commerce by various acts, including marketing, selling and offering for sale garments under the trade name VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET.

28. Such unauthorized use by defendants reproduces, counterfeits, copies, colorably imitates, and constitutes trademark infringement of plaintiffs' federally registered trademark VICTORIA'S SECRET and is likely to cause confusion and/or mistake in violation of 15 U.S.C. §1114(1).

29. Upon information and belief, the activities of defendants complained of herein constitute willful and intentional infringement of plaintiffs' federal trademark registrations in disregard of plaintiffs' proprietary rights, and were commenced and have continued in spite of defendants' knowledge that the use of plaintiffs' trademark, or any reproduction, counterfeit, copy or colorable imitation thereof, was and is in direct contravention of plaintiffs' rights.

COUNT II

VIOLATIONS OF SECTION 43(a) OF THE TRADEMARK ACT

30. Count II is an action for unfair competition, false designation of origin, false description and misrepresentation arising under Section 43(a) of the Trademark Act, 15 U.S.C. §1125(a).

31. Plaintiffs repeat and incorporate herein by reference each and every one of the averments contained in paragraphs 1 through 24, inclusive, with the same force and effect as if hereinagain set forth in detail.

32. Plaintiffs' trademark VICTORIA'S SECRET is inherently distinctive and/or has acquired distinctiveness through secondary meaning by virtue of use thereof throughout the United States which has made it well-known to the trade and members of the purchasing public, and the trade and public generally associates and identifies the plaintiffs' said trademark with the plaintiffs.

33. Defendants have used VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET in connection with the marketing, selling and/or offering of goods for sale in a manner that closely resembles Victoria's Secret's VICTORIA'S SECRET trademark and for goods which closely resemble plaintiffs' goods. Defendants have used VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET to convey a commercial impression substantially identical to that of Victoria's Secret's use of VICTORIA'S SECRET, and defendants are marketing similar types of products at comparable prices to the same class of purchasers.

34. Defendants' use of VICTOR'S SECRET in connection with a retail store service which markets, offers for sale and sells lingerie is intended to and is likely to cause the public to believe that defendants' goods are authorized, sponsored or approved by, or otherwise affiliated or connected with plaintiffs and their merchandise.

35. Defendants' acts of false designations of origin, and false descriptions and representations and unfair competition, unless enjoined by this Court, will continue to cause plaintiffs to sustain irreparable damage, loss and injury, for which plaintiffs have no adequate remedy at law.

COUNT III

VIOLATIONS OF THE FEDERAL DILUTION ACT

36. Count III is an action for federal dilution in violation of 15 U.S.C. §1125(c)(1).

37. Plaintiffs repeat and incorporate herein by reference each and every one of the averments contained in paragraphs 1 through 24, inclusive, with the same force and effect as if hereinagain set forth in detail.

38. Defendants' conduct is likely to blur and erode the distinctiveness of plaintiffs' VICTORIA'S SECRET trademark and tarnish the reputation of plaintiffs and said mark, with consequent damage to plaintiffs and the goodwill symbolized by said trademark, in violation of Section 3 of the Federal Dilution Act, 15 U.S.C. §1125(c)(1).

COUNT IV

COMMON LAW TRADEMARK INFRINGEMENT and UNFAIR COMPETITION

39. Count IV is an action for trademark infringement and unfair competition in violation of the common law of the state of Kentucky.

40. Plaintiffs repeat and incorporate herein by reference each and every one of the averments contained in paragraphs 1 through 24, inclusive, with the same force and effect as if hereinagain set forth in detail.

41. Plaintiff is the owner of all rights, title and interest in and to the trademark VICTORIA'S SECRET by

virtue of its adoption and use, and its extensive advertising, offering for sale and sale of various apparel bearing said trademark.

42. Defendants' retail store incorporates imitations of plaintiffs trademark.

43. Upon information and belief, defendants are unfairly using the VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET name(s) in connection with merchandise closely associated with plaintiffs' goods and trademark as to misappropriate plaintiffs' goodwill in their VICTORIA'S SECRET trademark.

44. The unauthorized acts by defendants in connection with their advertising, offering for sale and sale of their goods under the names VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET constitutes trademark infringement of plaintiffs, aforesaid trademark and unfair competition with plaintiffs, and is likely to cause confusion and mistake in the minds of the trade and the purchasing public as to the source or origin of defendants' garments and to cause purchasers to erroneously believe that defendants' garments are authentic garments of, or authorized by, plaintiffs when, in fact, they are not and/or that the defendants are authorized to do business under the name VICTOR'S SECRET or otherwise endorsed by plaintiffs when, in fact, defendants are not so authorized.

45. By their actions, defendants are improperly trading upon the reputation and goodwill of plaintiffs and are impairing the distinctiveness of plaintiffs' valuable rights in and to their VICTORIA'S SECRET trademark.

46. Upon information and belief, the activities of defendants complained of herein constitute willful and

intentional acts and common law infringement of plaintiffs' trademark and constitute unfair competition.

WHEREFORE, plaintiff demands:

A. That defendants, their agents, servants, employees, attorneys, representatives, successors and assigns and all persons, firms, or corporations in active concert or participation with them, be enjoined and restrained, during the pendency of this action and permanently from:

(1) directly or indirectly infringing the plaintiffs' trademark VICTORIA'S SECRET of plaintiff, in any manner, including generally, but not limited to, manufacturing, distributing, advertising, selling, or offering for sale and distributing any merchandise which infringes said trademark and specifically:

(a) using the designation VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET, or any mark similar thereto, or any reproduction, counterfeit, copy, or colorable imitation of said trademark in connection with the manufacture, distribution, advertising, offering for sale, sale or other use of apparel or accessories;

(b) applying the designation VICTORIA'S SECRET and/or VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET or any such reproduction, counterfeit, copy, or colorable imitation to any label, sign, print, package, offering for sale or sale of any apparel or accessories;

(2) using any designation, trademark, trade name, logo or design that tends to falsely represent that, or is likely to confuse, mislead, or deceive purchasers, defendants' customers, or members

of the public that the unauthorized merchandise manufactured, distributed, advertised, sold or offered for sale by defendants originates from plaintiffs, or that said merchandise has been sponsored, approved, or licensed by or associated with plaintiff or is in some way connected or affiliated with plaintiffs;

(3) engaging in any conduct that tends falsely to represent, or is likely to confuse, mislead, or deceive purchasers, defendants' customers, or members of the public to believe that the actions of defendants or defendants themselves are connected with plaintiffs, are sponsored, approved, or licensed by plaintiffs, or are in some way connected or affiliated with plaintiffs;

(4) affixing, applying, annexing or using in connection with the manufacture, distribution, advertising, offering for sale, sale, or other use of any apparel or accessories, a false description or representation, including words or other symbols, tending to falsely describe or represent such goods as being those of plaintiffs;

(5) otherwise infringing the trademark VICTORIA'S SECRET or competing unfairly with plaintiffs in any manner or damaging plaintiffs' goodwill, reputation or business;

(6) destroying or otherwise disposing of;

(a) merchandise falsely bearing the designation VICTORIA'S SECRET, VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET;

(b) any other merchandise which reproduces, copies, counterfeits, imitates or bears plaintiffs' trademark VICTORIA'S SECRET,

VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET;

(c) any promotional or advertising materials, labels, packages, wrappers, containers, or any other unauthorized items which reproduce, copy, counterfeit, imitate or, bear plaintiffs' trademark VICTORIA'S SECRET, VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET;

(d) any screens, patterns, plates or negatives used specifically for making or manufacturing labels, apparel or accessories bearing plaintiffs' trademark VICTORIA'S SECRET or intimates plaintiffs' VICTORIA'S SECRET trademark;

(e) any sales and supplier or customer journals, ledgers, invoices, purchase orders, inventory control documents, bank records, catalogs, recordings of any type whatsoever and all other business records and documents believed to concern the manufacture, purchase, advertising, offering for sale or sale of any merchandise bearing the designation VICTORIA'S SECRET or VICTOR'S SECRET or VICTOR'S LITTLE SECRET.

B. That defendants be required to account for all profits realized by defendants as a consequence of its unlawful acts and infringements alleged herein, and that the amount of profits realized by defendants by reason of its unlawful acts be increased to a sum not exceeding three times the amount thereof, as provided by law pursuant to §35 of the Lanham Act, 15 U.S.C. §1117.

C. That damages be awarded to plaintiffs in the full amount plaintiffs have sustained as a consequence of

defendants' acts, together with any and all profits of defendants which are attributable to, or arise out of or from such wrongful acts and infringements, trebled where provided by law pursuant to §35 of the Lanham Act, 15 U.S.C. §1117.

D. That plaintiffs be awarded punitive damages as may be allowed under Kentucky law.

E. That plaintiffs be awarded all costs, disbursements and plaintiffs' reasonable attorney's fees pursuant to §35 of the Lanham Act, 15 U.S.C. §1117.

F. That plaintiff have all other and further relief as the Court may deem just and equitable under the circumstances.

DEMAND FOR JURY

Plaintiffs demand a jury trial as provided for in Rule 38, Federal Rules of Civil Procedure.

Dated: Elizabethtown, Kentucky
May ___, 1998

COLEMAN, EASTON, LOCHMILLER & HALL

By: /s/ Reford H. Coleman
Reford H. Coleman
2907 Ring Road
P.O. Box 4030
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[Exhibits A, B, C, And D Omitted In Printing; They Are Available In The Record At R.1.]

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY,
CIVIL ACTION NO. 3:98 CV-395-S

V SECRET CATALOGUE, INC.
VICTORIA'S SECRET STORES, INC. and
VICTORIA'S SECRET CATALOGUE, INC.

PLAINTIFFS

vs. **ANSWER**

VICTOR MOSELEY and CATHY MOSELEY
d/b/a VICTOR'S LITTLE SECRET
(formerly VICTOR'S SECRET)

DEFENDANTS

(Filed Aug. 04, 1998)

* * *

Come the Defendants, Victor Moseley and Cathy Moseley d/b/a VICTOR'S LITTLE SECRET, by and through counsel, and for their Answer to the Complaint state and allege as follows:

1. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraphs 1 through 3 of the Complaint and therefore deny same.

2. Defendants admit the allegations contained in paragraphs 4 and 5 of the Complaint with the exception of the address of their business which is located on Sycamore Street, not Sycamores Street.

3. Defendants admit that portion of paragraph 6 of the Complaint which alleges that this Court has personal jurisdiction over Defendants because they reside in the

State of Kentucky in this judicial district and are transacting and doing business in the State of Kentucky in this judicial district, but deny the remainder of the allegations contained in paragraph 6 of the Complaint.

4. Defendants admit the allegations contained in paragraph 7 of the Complaint.

5. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 8 of the Complaint and therefore deny same.

6. Defendants admit the allegations contained in paragraph 9 of the Complaint.

7. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 10 of the Complaint and therefore deny same.

8. Defendants admit the allegations contained in paragraph 11 of the Complaint.

9. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraphs 12 through 18 of the Complaint and therefore deny same.

10. In regard to paragraph 19 of the Complaint, Defendants admit they own and operate a retail store under the name VICTOR'S LITTLE SECRET, which was formerly named VICTOR'S SECRET and which sells, among other things, lingerie, but deny that any merchandise sold in said store has labels which include the name of Defendants' store.

11. Defendants admit the allegations contained in paragraph 20 of the Complaint.

12. In regard to paragraph 21 of the Complaint, Defendants admit that in response to the "First Letter", Victor Moseley telephoned Victoria's Secret's attorneys on or about February 26, 1998, at which time the possibility of amending the presentation of Defendants' VICTOR'S SECRET name was discussed.

13. In regard to paragraph 22 of the Complaint, Defendants admit that during the aforementioned telephone conversation, Victor Moseley agreed to send to Victoria's Secret's attorneys a proposed name change for VICTOR'S SECRET to VICTOR'S PRECIOUS SECRETS.

14. Defendants admit the allegations contained in paragraphs 23 through 25 of the Complaint.

15. Defendants respond to the allegations contained in paragraph 26 of the Complaint as set forth above in paragraphs 1 through 14 of this Answer.

16. Defendants deny the allegations contained in paragraphs 27 through 29 of the Complaint.

17. Defendants admit the allegations contained in paragraph 30 of the Complaint.

18. Defendants respond to the allegations contained in paragraph 31 of the Complaint as set forth above in paragraphs 1 through 17 of this Answer.

19. Defendants admit the allegations contained in paragraph 32 of the Complaint.

20. Defendants admit that portion of paragraph 33 of the Complaint which alleges that Defendants have used

VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET in connection with the marketing, selling and/or offering of goods for sale, but deny the remainder of the allegations contained in paragraph 33 of the Complaint.

21. Defendants deny the allegations contained in paragraphs 34 and 35 of the Complaint.

22. Defendants admit the allegations contained in paragraph 36 of the Complaint.

23. Defendants respond to the allegations contained in paragraph 37 of the Complaint as set forth above in paragraphs 1 through 22 of this Answer.

24. Defendants deny the allegations contained in paragraph 38 of the Complaint.

25. Defendants admit the allegations contained in paragraph 39 of the Complaint.

26. Defendants respond to the allegations contained in paragraph 40 of the Complaint as set forth above in paragraphs 1 through 25 of this Answer.

27. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 41 of the Complaint and therefore deny same.

28. Defendants deny the allegations set forth in paragraphs 42 through 46 of the Complaint.

29. Defendants deny any and all allegations not specifically admitted herein.

FIRST AFFIRMATIVE DEFENSE

The name alleged to be an infringement of Plaintiffs' trademark is a use of Defendant Victor Moseley's name in his own business, is descriptive of said business and is used fairly and in good faith to describe the nature and origins of Defendants' business and the goods and services provided by said business.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the equitable doctrines of estoppel, laches and/or acquiescence.

THIRD AFFIRMATIVE DEFENSE

Defendant's use of the name VICTOR'S LITTLE SECRET in a limited geographic area is unlikely to confuse, mislead or deceive a consumer as to any affiliation, connection or association of Defendants with the goods or services provided by Plaintiffs.

WHEREFORE, the Defendants Victor Moseley and Cathy Moseley d/b/a VICTOR'S LITTLE SECRET, request that the Complaint be dismissed with prejudice, that they be allowed to recover their attorneys fees and costs expended in the defense of this action and that they be

granted any and all other relief to which they may be entitled, including a trial by jury on all issues so triable.

Respectfully submitted,

STITES & HARBISON

BY: /s/ Don A. Pisacano
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COUNSEL FOR DEFENDANTS, VICTOR AND CATHY MOSELEY d/b/a VICTOR'S LITTLE SECRET

and

JOHN E. SPAINHOUR, ESQ.
GIVHAN & SPAINHOUR
Doctors Alley & 3rd Street
P. O. Box 65
Shepherdsville, Kentucky 40165
Telephone: (502) 543-2218

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Answer has been served by first class U.S. Mail upon the following:

Redford H. Coleman, Esq.
2907 Ring Road
P. O. Box 4030
Elizabethtown, Kentucky 42702

on this the 4th day of August, 1998.

/s/ [Illegible]
COUNSEL FOR THE ABOVE-NAMED DEFENDANTS

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY

AT LOUISVILLE

V SECRET CATALOGUE, INC., VICTORIA'S SECRET STORES, INC. and VICTORIA'S SECRET CATALOGUE, INC.	)	
Plaintiffs	)	NO. 3:98CV-395-S
VS.	)	(Filed Nov. 18, 1998)
VICTOR MOSELEY and CATHY MOSELEY d/b/a VICTOR'S LITTLE SECRET (formerly VICTOR'S SECRET)	)	
Defendants	)	

THE DEPOSITION OF VICTOR MOSELEY
TAKEN BY THE PLAINTIFF
Elizabethtown, Kentucky
October 29th, 1998

TRIELOFF COURT REPORTING
Carl R. Trieloff
120 East Memorial Drive
Elizabethtown, KY 42701 (502) 737-2028

* * *

[6] Q. Could you just briefly tell me what your educational background is?

A. I have a GED.

Q. Okay. And what is that?

A. General education diploma.

Q. Okay. And can you briefly tell me what your employment background has been, say your first full-time job, up until the business that we're talking about in this case?

A. Run that by me again.

Q. Okay. Just give me a general background as to the jobs that you've had over the past few years?

A. Retail.

[7] Q. Full-time jobs.

A. Retail.

Q. Okay. Retail –

A. Department stores. My last position was general manager over 9 stores.

Q. And with what company?

A. New Age Gifts.

Q. And what kind of merchandise is that?

A. Rock and roll, lava lights, black lights, jewelry, smoking paraphernalia, adult novelty and gifts. Basically it was more like a head shop. That's about the easiest way to refer to it.

Q. Now I'm not familiar with the Kentucky area, was this a local store?

A. Louisville.

Q. Louisville. Okay. And how long did you work for them?

A. Approximately four years. Can't remember exactly.

Q. Was that the most recent job that you had before starting the present business?

A. Yes.

* * *

[9] Q. It just makes it a little easier for the court reporter. Also the record will read a little better if we just slow down a little bit. And I also asked you to produce some documents, do you recall that?

A. Yes.

Q. And the documents are here today, is that correct?

A. Yes.

Q. Now, in your answers to the interrogatories – I think you have the original right in front of you – like at interrogatory number 1, you mention two businesses: East View Enterprizes and Debesst Paging; do you see that?

A. Um-hm.

Q. What is East View Enterprizes?

A. My wife owns East View Enterprizes. East View Enterprizes started out with selling adult novelty and gifts, the in-home parties, plus a diet formula.

Q. Are you involved in that business?

A. Now I am, yes.

Q. And where is it located?

A. It's run out of our home.

Q. Not at the location where Victor's [10] Little Secret is?

A. It's kind of a combo. We book in-home parties through the store.

Q. Okay. And what is Debesst Paging?

A. It's a paging company. Pretty well self-explanatory.

Q. All right. And whose business is that?

A. That is Cathy's.

Q. All right. And where is that run out of?

A. Both; home and store.

Q. How long has East View Enterprizes been in business, approximately?

A. A year.

Q. And Debesst Paging?

A. 9 months. No, be longer than that, I'm sorry, it would be a year.

Q. How long have you been married?

A. 25 years.

Q. Have you always been in business together?

A. No.

Q. This was a new enterprizes?

A. Yes.

[11] Q. And all these businesses: East View and Debesst Paging, and Victor's Little Secret was something you decided upon within the last year or two?

A. Yes.

Q. All right. Let's go just before you – to the time before you decided to start a business that eventually became known as initially Victor's Secret and later or now Victor's Little Secret. Do you remember about when that was?

A. Three weeks before February 7th. I can't remember the date, but it was approximately three weeks before that.

Q. Of 1998, correct?

A. No. That would be 1997.

Q. Okay. 1997.

A. Because we thought about it – no, 1998. January 26th. Around January 26th.

Q. Okay. Of what year?

A. 1998.

Q. All right. So when can you best, in your own mind, state when you began to think about this business that eventually became known as Victor's Little Secret?

A. Three weeks before February 7th.

[12] Q. And what brought this about?

A. I'd been unemployed, I was laid off from my previous job, I was hunting for a job. My unemployment was getting ready to run out. And I couldn't find a job in

my position, which is general manager, the market was pretty well flooded. So if I was going to have to work for a minimum wage I decided I'd do it on my own.

Q. Now, were these other businesses, East View Enterprizes and Debesst Paging in existence at that time?

A. Yes.

Q. And they were being run out of your home?

A. Yes.

Q. Now, one of the things you had to do was find a location, correct?

A. Yes.

Q. And is that leased, the current location?

A. Yes.

Q. And when did you sign the lease?

A. I can't remember an exact date, but it was in that three-week span.

Q. Okay. Now, do you understand the [13] difference between a proprietorship, meaning, you know, where two people or one person gets together and runs a business without being incorporated, as opposed to a corporation; do you understand that?

A. Yes.

Q. What is your legal – what kind of legal entity are you?

A. We're a proprietorship.

Q. Okay. And who – what is the name of the landlord at your location?

A. Houchen's Plaza.

Q. And did you sign the lease?

A. I can't remember whether I signed it or Cathy signed it.

Q. And are you both the lessees; you and Mrs. Moseley the lessees?

A. I believe she's the only one on the lease.

Q. And how long is the lease for?

A. It was on one-year terms with options to renew. And up to five years, I believe. Without having it in front of me I can't remember.

Q. Okay. So your best understanding now – I know it's a legal document – but your best understanding is you had a lease, when did [14] the lease begin?

A. First of February.

Q. Okay. Of '98?

A. Yes.

Q. And it's a one-year lease with options to renew, is that what you're saying?

A. Correct.

Q. Okay. Is anyone else involved in this business besides you and your wife?

A. No.

Q. And did you have to put up money to start this business?

A. Yes.

Q. Okay. And was – did anybody help you along with the financing for the company?

A. No. Credit cards.

Q. Okay. Now, how much space is there at this store that's now called Victor's Little Secret?

A. Approximately 1100 to 1200 square feet.

Q. Okay. And can you describe the exterior of the shop?

A. I can describe the front and the back.

Q. Okay.

[15] A. But it's a whole line of buildings. It's a strip mall. It's not set off by itself.

Q. Let's just talk about your shop, without the rest of the buildings, okay? What does the front of your shop look like?

A. Front is approximately – approximately 40 feet across. No, be 20 – 22 feet across. And brick on the bottom. Glass windows, doors, up at the top is a metal backing. And of course our sign is there. The back is rather plain. It's just metal back.

Q. Okay. The back entrance is what you're talking about?

A. Yes.

Q. Can you see through the windows?

A. Yes.

Q. And what would you see if you looked through the windows of your shop? Are they display windows, for example?

A. Yes.

Q. What's on display in your windows, currently?

A. Wizard candles, skulls, pumpkin innocence [sic] burners, claw innocence [sic] burners, puzzles, pumpkins, manikin [sic] with a vampire bat [16] outfit on. A manikin [sic] with harem girl outfit on. A sign that says "Debesst Pagers", a sign that says "free pager", a sign that says "free activation, $7.00 a month air time". Lava lights, icon lava lights. A male torso with a thong on, a Halloween thong. I can't remember what the Halloween thong says. He's got a wizard necklace on. A bone box. The manikin [sic] with the harem girl outfit has a belly chain on. I said the puzzles. A basket of flowers. A live plant. And that's about all I can remember.

Q. That's very good. Now, I take it that the display windows, at this time, since we're coming up to Halloween, is sort of displayed for the Halloween season, is that correct?

A. That's correct.

Q. Okay. And going back to when the store initially opened when it was called just Victor's Secret, would it be substantially the same?

A. Yes.

Q. All right. And now this is an adult shop, correct?

A. No.

Q. All right.

[17] A. It's set up where children can enter. Because everything in the adult portion is kept in a separate portion of the store.

Q. Okay. Are there any adult or what I call x-rated items shown in the window display –

A. No.

Q. – windows. Okay. So a child or somebody who is not an adult can look in the windows safely, essentially?

A. Correct.

Q. Okay. Is there any signage to indicate that this is an adult, or they have an adult section in there?

A. Yes.

Q. Where do you see that?

A. At the back of the store, where the store is divided.

Q. But looking at it from the outside would anybody know that there was an adult section in the store?

A. You can see the sign from the window, yes.

Q. Would that be similar to, for example, in a video rental store, where they would have an adult section, as opposed to general audience [18] films on the outside?

A. Yes.

Q. Okay. Now, when you go inside the store how is it laid out?

A. Down the walls on both sides are pegboard and Lowe's shelving. And down through the – the center are clothing fixtures, clothing racks. We have some dump tables scattered around. On the right-hand side, which abuts up to the adult section, is a run of glass show cases. And there's an entrance to the adult center behind the show cases for us to use, and then the customer has to go in and around to get to the adult section from the outside.

Q. Okay. Now just, before we get into the adult section, let's just talk about the area that doesn't have adult items. Do you sell any type of clothing items in this section? You said – you mentioned clothing racks?

A. I sell lingerie, men's thongs, women's crotchless underwear, lycra dresses, weightlifter gloves, T-shirts, novelty T-shirts, leather chaps, and leather outfits.

Q. Okay. We're still in the non-adult section we're talking about?

[19] A. Correct.

Q. Okay. Now, I don't mean to be prudish or anything, but in this section the type of clothing that you're mentioning, is that clothing that ordinary people would wear, as opposed to something that would be shown in some of these catalogs?

A. Well, my customers are ordinary people and they buy it. That's the best way I can put it.

Q. Well, let me see if I can be a little clearer. In some of the lingerie that's shown in the catalogs that you brought along here, I would say is of the adult type; would you agree with that?

A. No. I wouldn't agree with that.

Q. All right. Is it similar to the lingerie that you would buy in a department store that you're selling in this non-adult – in this non-adult section, or is it some kind of special clothing item – items?

A. It's a combination of both.

Q. Okay. And how would you – how would you differentiate between the two? I mean, between a type of clothing items that you would [20] find in a department store and the kind of clothing items that you sell in your non-adult section?

A. I sell no clothing items out of my adult section. You can buy the same types of lingerie we sell in other department stores. Baby dolls, there's other stores that sell leather outfits, and so forth.

Q. Okay. And how much of the – again, we're still talking about the non-adults section – is it made up of clothing items as opposed to other items?

MR. PISCANO: Let me just maybe clarify that. Are you looking for space, square footage, percentages?

Q. No, percentage of items, merchandise. In other words, item by item. I mean, are you selling more clothing than you're selling of all these other things? If you look at your answer to interrogatory –

A. Of non-adult?

Q. Yes. In the non-adult section. Let me see if I can – what do you sell the most of in the non-adult section? What type of merchandise?

A. That would be hard to say. I sell a [21] lot of everything. I mean, I sell a lot of – I sell a lot of lingerie, I sell a lot of thongs, I sell a lot of incense, I sell a lot of electrical supplies, jewelry, diet formula.

Q. Okay. Are there any posters on the walls inside the non-adult section?

A. Rock and roll prints.

Q. All right. Now let's go into the adult section. Is that cordoned off or closed off somehow so that people that are in the non-adult section can't go in there?

A. Yes.

Q. And how is it cordoned off, or how is it blocked off?

A. It's in a room by itself.

Q. Yes.

A. The room is approximately 8 by 10. The employee entrance or our entrance to the adult room is behind the show cases on the right-hand of the store and the building is divided in half. To get – for the customer to get into the adult room we have to step through, unlock the door, and they go through an opening that's on the right-hand side. They actually go in a hall, then into a door.

[22] Q. So somebody can't just wander in there without you knowing it?

A. Correct.

Q. Okay?

MR. PISACANO: You need to let him ask the question first. Okay. Make sure you let him finish his question.

Q. Is there any other way of entering the adult section other than through the store or the way you just described?

A. No.

Q. Can you go in through a back door, for example?

A. No.

Q. Okay. Now what is in this adult section, this 8-by-10 room?

A. Okay. We have adult novelties, adult videos – do you want specific breakdown?

Q. No. Just generally like to know what's in there?

A. Adult novelties, adult videos, risque cards, gift cards, greeting cards. Anything we feel might be extremely offensive to the general public to where they might be offended.

Q. Okay. I mean, in this particular [23] room, does a person enter one at a time or can you have two, three, four people in there at one time?

A. With the size of the space, if it's a group that come in together, husband and wife, three or four women, we will let that group in. But then the customer has to wait – the next customer would have to wait until they finish their shopping.

Q. Okay. Is there any signage inside this adult section? Posters, or anything like that, on the walls?

A. The same gentleman that does the prints does some risque prints, those are up. There's a sign that says absolutely no refunds or exchanges.

Q. And when somebody purchases or wants to purchase something from the adult section they come out of the room, they bring their purchases to the front of the store?

A. No, sir.

Q. Where do they make the purchase?

A. The purchase is bagged in the back in brown paper bags, then we bring it to the register and ring it.

Q. Okay. All right. Now let's talk [24] about, since you mentioned bags, do you have shopping bags that have the name of your store on them?

A. No.

Q. Do you have any wrapping paper that has the name of your store on them?

A. No.

Q. So it's all brown paper type thing?

A. Well, brown paper, the plastic thank you bags, the general thank you bags.

Q. Do you have business cards?

A. Yes.

Q. Okay. And do you have one with you?

A. Sure. I have two styles. (Witness hands cards to Mr. Colucci) The difference being is the back.

Q. Oh, okay. I see. All right, can we mark these?

MR. PISACANO: Yes. Let me see them.

MR. COLUCCI: Okay. So let's mark the one business card with nothing on the back, for identification, as Plaintiff's Exhibit 2, and the card – the business card that has a 25 percent off discount on the back as Exhibit 3.

[25] (REPORTER'S NOTE: PLAINTIFF'S EXHIBIT NO. 2 – PLAIN BUSINESS CARD; AND NO. 3 – BUSINESS CARD WITH DISCOUNT ON BACK – WERE MARKED FOR IDENTIFICATION)

Q Now, Mr. Moseley, when you started the – this business I take it you had business cards, correct?

A. No.

Q. You did not have business cards? Did you ever have any business cards that just said Victor's Secret without Little Secret on it?

A. No.

Q. All right. And was there a sign over your store at one time that just said Victor's Secret –

A. No.

Q. – as opposed to Victor's Little Secret?

MR. PISACANO: Again.

THE WITNESS: I'm sorry.

MR. PISACANO: You're thinking too quickly.

MR. COLUCCI: And I'm speaking too slowly.

MR. PISACANO: Let him ask the [26] question, get it out, and then you get to answer. Try to count to 3 after he's finished –

THE WITNESS: Okay.

MR. PISACANO: – talking.

Q. Do you have any other materials that a person would take away from your store after visiting them that would have Victor's Secret or Victor's Little Secret on them?

A. The register receipt.

Q. Okay.

A. If they used a charge card, it's on our charging and printer. I believe that's it.

Q. You brought to the deposition some catalogs, correct –

A. Right.

Q. – that are here on the table? And I'll just pick up the top one. See if we can mark this as Plaintiff's Exhibit 4 for identification

(REPORTER'S NOTE: PLAINTIFF'S EXHIBIT NO. 4 – COVER OF CATALOG – WAS MARKED FOR IDENTIFICATION)

Q. Mr. Moseley, tell me what we've marked as Exhibit 4, if you can identify that for the record, please?

[27] A. Okay. This is a generic catalog that we purchase from Minor Creations, and we put our own price list in this and then we sell this to the customer. If they

come into the store, they want to purchase it, we will sell it to them and then they can come into our store and order merchandise from it.

Q. Okay. So are you saying that you actually sell the catalog, itself?

A. Yes.

Q. And where – where would the customer see these catalogs?

A. They would ask. They are not out on display or anything else, they would just ask do you have a catalog of this or that.

Q. How would they know to ask?

A. Never thought about it. They just ask.

Q. Do you tell them that you have catalogs in case they want to order something, or –

A. Yes.

Q. Okay. And where are the catalogs kept, where do you keep them?

A. We have a stack of catalogs on the [28] counter that – one of each catalog that a customer can look through. Then if they request one of these catalogs these are kept in a file cabinet in the back.

Q. Are these catalogs on display in the non-adult section of the store?

A. Yes.

Q. And did you always have these catalogs in the store from the time it first opened?

A. Not all of them.

Q. Okay. Catalogs like them, okay?

A. Yes.

Q. And I noticed, in – there are about five or six here, all told, and some of them have sticker on that says Victor's Little Secret –

A. Yes.

Q. – correct? And did it always have a sticker on the catalogs?

A. No.

Q. And why do you put a sticker on some and not others?

A. When a customer buys one we put a sticker on there.

Q. I see. Okay. Now, did you have other stickers previous to the ones that says Victor's [29] Little Secret, that just said Victor's Secret?

A. No.

Q. Is it fair to say that you never had any materials at any time that just had Victor's Secret on it, as opposed to Victor's Little Secret?

A. Yes.

Q. And what do you sell the catalogs for?

A. Depends on the catalog. $2.75 to $5.00.

Q. And do you physically take the orders in the store from the catalog, or are they phone-in, or how –

A. We take them in the store. The customer puts down a 25 percent deposit, and then we order the item for them.

Q. And then does the item come to the store, or does it go directly to the purchaser?

A. Comes to the store.

Q. Now, are you listed in any telephone books?

A. Yes.

Q. Which – which telephone books are you listed?

A. I'm trying to remember. I believe [30] just the Eliz – local Elizabethtown.

Q. All right. Now, I'm not familiar with what that looks like. Where I'm from we have a white pages and a yellow pages. Is that – is this a classified directory, like a Yellow Pages?

A. It's both.

Q. It's both?

A. White and yellow.

Q. Which section are you in, or are you in both?

A. I can't remember.

Q. Okay.

A. To be honest.

Q. And do you know how you're listed? I mean, is it Victor's Little Secret?

A. Victor's Little Secret.

Q. In some of the telephone directories there are display ads, are you familiar with that?

A. Yes.

Q. Do you have a display ad in this directory that you're in?

A. No.

Q. How long have you been listed in the local telephone directory?

A. It just came out in the new phone [31] book.

Q Okay.

A. And I believe that was in – I believe it was in August. I can't remember when the new phone books came out.

Q. Can you tell me, again, what the name the directory is that you're listed in, the telephone directory?

A. It's the Elizabethtown phone directory.

Q. And you're not listed in any other directories –

A. Not that I know of.

Q. – outside – do you have a – I was going to ask you about a 800 number, but I see there's a 1 877, is that the same as an 800 number?

A. That's the same.

Q. Ran out of 800 numbers so you got 877 now?

A. Yes.

Q. And is that listed in the telephone directory, as well; do you know?

A. I don't know.

Q. Is there a recording or anything on [32] your telephone machine, when somebody calls in if you're not there –

A. No.

Q. – do they get a recording? And what is the general price range of the merchandise that you sell? I mean, what's the, say, the least expensive to the most expensive item in your store?

A. 75 cents to $279.99.

Q. Okay. What's $279, for example?

A. A blow-up doll.

Q. Now, besides you and your wife, do you have any other employees in the store?

A. No.

Q. Now, there are some documents here also that show your business registration, et cetera?

A. Yes.

Q. Did you attend to all of that, you and your wife, yourself, or did you have some assistance from an attorney, or what?

A. Cathy and I did.

Q. You did it all yourself, right?

A. Yes.

Q. When you say in your – when you say [33] in your answer to interrogatory number 6 – if you look at it, it's on page 4 – You say we checked at the Hardin County Clerk's office and no names close were recorded; did you personally do that you and Cathy?

A. Yes.

Q. I'm sorry, Mrs. Moseley. Is it fair to say that you did this – set up this entire business, just you and her –

A. Yes.

Q. – on your own? Okay. Now what kind of advertising do you do for your shop, other than the fact that there's a store there and people pass by and see it, do you place any advertisements in newspapers, for example, or do any radio commercials or whatever?

A. We've done a couple radio commercials. We did – we advertised in the "Weekly Shopper", which is a free issue. And we have advertised in some of the newspapers.

Q. Okay. I'm not familiar with the "Weekly Shopper", where does that circulate, is that just in Elizabethtown?

A. No.

Q. What's the geographic area that it [34] circulates, if you know?

A. I can't remember. He showed me a map. I can't remember.

Q. Is it local?

A. Basically local area.

Q. Okay. And is this – is this a – I mean, how large a newspaper is it, or how large a publication is it?

A. About 8 pages.

Q. And do you take the display ads out in this weekly shopper?

A. Describe a display ad for me, what you're referring to as a display ad.

Q. All right. What type advertising do you put in the weekly shopper? Do you have a sample of it here?

MR. PISACANO: We produced those in the initial disclosure, I think.

THE WITNESS: I think we did.

MR. PISACANO: This what you're talking about?

THE WITNESS: Um-hm.

MR. COLUCCI: Can I see? I don't remember seeing this. When were we furnished with this, at the first conference, you think, Don?

[35] MR. PISACANO: The initial disclosure. Before the first conference.

MR. COLUCCI: Okay. If you furnished it to us fine I have it somewhere, I just don't right now.

MR. PISACANO: No, I have it. This way it's good for you to attach it if you want. That looks like the radio commercials, too.

MR. COLUCCI: Okay.

Q. How often do you advertise in the weekly shopper?

A. I have no set schedule. I may advertise twice in a month and then go a month without advertising at all.

Q. Do you advertise in any other newspapers, other publications? You mentioned some newspapers –

A. I have in the past, in – what's it called? In the local newspaper. The name is just – "News Enterprise".

Q. And how often have you advertised in the "News Enterprise"?

A. Once or twice.

Q. Once or twice since you've been in business?

[36] A. Yes.

Q. All right. And you said you also advertise on the radio, and I think we've been furnished with scripts; how often do you advertise on the radio?

A. A couple of times since we've opened. It's just too expensive.

Q. Now, one of the commercial scripts that we were furnished, or was given to us at the initial disclosure conference, was one for WRZI, WKMO, WIEL is that the radio station; one of those?

A. One of those, yes.

Q. Okay. All right. And the document that I'm looking at is – just, again, for the record was Bates stamp D 10 – let's take a look at it, it says at the top client

Victor's Secret, and then if you read the copy you'll see some handwriting, and where little has been inserted?

A. Um-hm.

Q. All right. Now, did you initially advertise on the radio as Victor's Secret?

A. This was done when we first opened the store. And before this hit the air, after I had spoke with Matt Lombard, we changed it to Victor's [37] Little Secret before it hit the air.

Q. Okay. So it never ran as Victor's Secret?

A. No, sir.

MR. COLUCCI: Okay. Thank you. Could we just mark this as exhibit – do you mind if I mark this? We'll make a copy of it.

MR. PISACANO: Yeah, make a copy of it

(REPORTER'S NOTE: PLAINTIFF'S EXHIBIT NO. 5 – RADIO ADVERTISEMENT SCRIPT – WAS MARKED FOR IDENTIFICATION)

Q. So is it fair to say that you don't have any contracts, advertising contracts with any of the newspapers or radio stations to advertise on a continuing basis, is that correct?

A. I have none with anyone.

Q. Okay. And does that pretty much cover the extent of the advertising you've done outside of the shop?

A. Excluding business cards.

Q. Okay. Excluding the business cards, the "Weekly Shopper", "News Enterprise" and the radio commercials?

A. Yes.

[38] Q. Is that fair to say that that's the extent of the advertising?

A. Yes.

Q. To date?

A. To date.

Q. Do you have any plans to advertise in the future, or do you have any contracts with any newspaper or radio, TV?

A. I have no contracts, but, yes, I plan to advertise.

Q. Sure. I understand. Now, among the items that you indicate you do sell, you said lingerie, now is the lingerie branded lingerie, does it have a label in it that has a brand on it?

A. Yes.

Q. Do you know what brands of lingerie you carry?

A. Yes.

Q. Could you tell me some of them?

A. Minor Creations.

Q. Is it Manner, M-A-N –

A. Minor, M-I-N-O-R, Creations.

Q. – M-I?

A. N-O-R. M-I-N-O-R. –

Q. Okay.

[39] A. Creations.

Q. Any others?

A. Fantasy Lingerie. Some of the labels say Risque, which just comes from the same company of Shirley of Hollywood.

Q. Is that one – I thought I saw in one of the catalogs, correct?

A. Right. Yes. They are all the same company.

Q. All right. Any others that you can think of?

A. Ecstacy Leather. I believe that's it.

Q. All right. And I believe you also sell some hosiery, too?

A. Yes.

Q. And do they have brands, do you sell brand hosiery? Are they the same brands that you mentioned for the lingerie?

A. Not all.

Q. What different ones?

A. We have Air Hosiery, Shirley of Hollywood, Fantasy. I believe there's one more but I can't remember exactly what it is.

Q. Okay. And the T-shirts that you sell, do they have sew-in labels on them with brands, [40] like Hanes or –

A. Fruit of the Loom. And there may be some Hanes.

Q. They come to you screen printed already –

A. Yes.

Q. – or do you – and what type of jewelry do you sell? List it I'm not sure what it is?

A. Currently imported cheap jewelry.

Q. Is it adult or non-adult jewelry?

A. Non-adult.

Q. Now a lot of people are on the Internet these days, are you on the Internet?

A. Not at this time.

Q. And do you take all the regular credit cards?

A. MasterCharge, Visa, American Express and Discover.

Q. And the checks that you write, do they have the name of your shop on the checks printed on them?

A. Yes. They say Victor's Little Secret d/b/a – no Victor and Cathy Moseley d/b/a Victor's Little Secret.

[41] Q. Okay. And you keep your own accounting records, books and records of sales and things of that nature?

A. Yes.

Q. You don't have an outside accountant or bookkeeper?

A. No.

Q. You do your own filings with whatever state or whatever required for the company?

A. Yes.

Q. And do you have to pay up front for the merchandise that you sell, or is it sold to you on some sort of a consignment basis, or what's the arrangement with your suppliers? Or may differ?

A. They differ.

Q. Okay.

A. I have some items in on consignment, I have terms of net 30 on some companies. Some companies I get special – well, like right now I got special Christmas dating on some merchandise, which is approximately net 90. I have some C.O.D. cash. Well, company check, C.O.D. company check. But all of that has changed over the time we've been open.

[42] Q. Now, you recall receiving a letter from my office regarding the name Victor's Secret correct?

A. Correct.

MR. COLUCCI: Now let's mark for identification as Exhibit 6, copy of a letter from G. Matthew Lombard to Mr. Victor Moseley dated February 25, 1998.

(REPORTER'S NOTE: PLAINTIFF'S EXHIBIT NO. 6 – FEBRUARY 25, 1998 LETTER FROM MR. LOMBARD – WAS MARKED FOR IDENTIFICATION)

THE WITNESS: I've got a copy of it here.

Q. Do you recall receiving that letter from my office?

A. Yes, I do.

Q. At the time you received this letter on February 25, 1998, or thereabouts, were you using the name Victor's Secret?

A. Yes.

Q. And how were you using it at that time? This is in February of 1998.

A. That was the name we applied for to get our business license. And at that time we had [43] sent out letters to friends and relatives under that name to come visit the store. And that's about it.

Q. Okay. What I'm trying to find out because I think before you said that there wasn't any signage that had Victor's Secret on it, it's always been Victor's Little Secret, is that correct?

A. We had a banner that came in, but it was late coming in, also.

Q. Okay. But there was something at some time that just said Victor's Secret?

A. Yes.

Q. Okay. And what was that?

A. It was a banner.

Q. Was it draped over the front of the store before your sign came, is that – is that correct?

A. It was put up on the front of the store with metal screws.

Q. Okay. And that was the only thing you had that had Victor's Secret on it?

A. My register was programmed for Victor's Secret and my charge machine was Victor's Secret.

[44] Q. Okay.

A. And my business license was Victor's Secret.

Q. But in terms of the ordinary consuming public, all they would have seen at this time would have been the name over the front of the store?

A. Yes.

Q. There was no advertising or anything like that nature?

A. Other than the letters we had sent out and the ad that we were getting ready to run in the – I believe the ad in the "News Enterprise" went out under Victor's Secret. I can't remember without seeing it.

Q. Okay.

A. It's in the – in the file you have.

Q. Now the letters, you said you sent them to – who did you send them to?

A. Just friends and relatives. That was for our grand opening February 7th.

Q. Do you have a sample of that letter?

A. It's in your file there.

Q. Now after you received this letter from my office my understanding is that you then [45] changed to Victoria's – I'm sorry, Victor's Little Secret, is that correct?

A. After discussing it with Matt, Yes.

Q. Okay. And what did you have to do to change from Victor's Secret to Victor's Little Secret; explain that to me?

A. We changed – went to the bank, we changed the name of the account at the bank, we contacted the sign company that was working on our sign and redid all of that. We contacted everybody that we had ads going out with, the radio station, I can't remember who all the ads were with, and had them change it. We contacted – I believe we had to call Frankfort to change – change it on our business license. Um, to be honest, I can't remember everything else we did.

Q. Okay.

A. We called all of our accounts and changed the people we dealt with, our vendors and suppliers, also.

Q. And who designed the little, I guess it's the finger over the lips logo that's in the center of Victor's Secret?

A. Actually I did.

[46] Q. You did. Okay. And apart from inserting that between the name Victor's and Secret, was anything else done with respect to the sign, as it was originally ordered from the sign company?

A. The lips and the hand were going to be a part of that anyhow.

Q. I see.

A. We added the word "little".

Q. I see. Okay. So the sign, as you originally ordered it from the sign company, was going to say Victor's and

then it was going to have the lips and the finger over the lips, and the words "Secret", correct? And what you did was just put the word "little" over the –

A. No. Actually, it was going to be "Victor's" with the hand and stuff in the middle and "Secret" on the bottom.

Q. Okay. So you didn't add the – you didn't add the lips and the finger over the lips, it was just the little word – the word "little", is that correct?

A. Correct.

Q. Was there an extra charge involved in your changing the sign from when you'd ordered it [47] originally from the sign maker to what eventually became the current sign?

A. No.

Q. I mean, he hadn't started on it, right?

A. Right.

Q. Okay. So you didn't incur any additional expense as a result of that?

A. Exactly.

Q. And changing your business licenses, was that just done by phone, or how was it done?

A. Phone and fax.

Q. Okay. And then I see the radio commercial had originally been scheduled to go on saying Victor's Secret and you changed that to Victor's Little Secret, correct?

A. Correct.

Q. But the commercial had never aired as Victoria's Secret – uh, Victor's Secret?

A. I can't remember if one had aired or not. I believe one had aired before I caught it and had them change it.

Q. Did you incur any additional costs or expenses as a result of making this change?

A. No.

[48] Q. With respect to the radio commercial?

A. No.

Q. And you didn't have any business cards printed up at the time, correct; so you didn't have to change any business cards?

A. Correct.

Q. And the register – changing the name on the register, what did that involve?

A. Re-programming.

Q. And you said also you had to change your name for the credit card companies?

A. Yes.

Q. What did that involve?

A. Re-programming.

MR. COLUCCI: I'd like to mark as Exhibit 7 for identification a letter dated March 20, 1998 from my office to Mr. Moseley

(REPORTER'S NOTE: PLAINTIFF'S EXHIBIT NO. 7 – MARCH 20, 1998 LETTER FROM MR. COLUCCI TO MR. MOSELEY – WAS MARKED FOR IDENTIFICATION)

Q. Mr. Moseley, do you remember receiving this letter from my office on or about March 20th, 1998?

[49] A. Yes.

Q. Did you respond to this letter?

A. Yes.

Q. How did you respond? Did you respond in writing or did you respond orally?

A. I responded by phone.

Q. And what was your response?

A. I called Matt Lombard – I believe it was Matt – and I told him it was bull and that I wasn't going to send them anything.

Q. Okay. That was the extent of your conversation with Mr. Lombard?

A. Over this letter?

Q. Yes.

A. Correct.

Q. Okay.

A. The nicer part of it.

Q. Now, in your answers to the interrogatory – actually number 12 on page 6 – we asked for the total dollar amount that you spent to date on advertising and

promotion. And the answer was approximately $2,364.17 is that accurate?

A. It would be real close.

Q. Okay. And does that include the [50] advertisements in "Weekly Shopper" as well as the radio commercial?

A. That would be all advertising: Business Cards, everything included.

Q. Okay. Now, if you'd look at page 7 of the responses to interrogatory number 17, who is Brian Walker? Says radio DJ?

A. Brian Walker is the DJ for the radio station that we advertised with.

Q. The station that was?

A. 101.5. Star 101.5.

Q. And have you spoken to Mr. Walker about this lawsuit?

A. He's aware of the lawsuit, because of being in the newspaper and so forth.

Q. And have you asked him to testify in this case if it goes to trial?

A. Yes.

Q. And has he agreed to do so?

A. Yes.

Q. Now, there's a reference to Chuck Carey and his wife, and the name Fusion Technologies, Inc., who are they?

A. They are just a customer that came into our store.

[51] Q. You don't have any business relationship with them?

A. No.

Q. Other than they are customers?

A. Exactly.

Q. And have they agreed to be witnesses in this case if it goes to trial?

A. Yes.

Q. Okay. Now if you'd look at pages 4 and 5 of your answers to interrogatory number 9. We talked about some of the names that were considered by you but obviously not chosen. When did this process occur, if you can recall, approximately, when you were thinking of the name for the shop? When did it begin and when did it end?

A. It began approximately three weeks before February 7th, when we decided to open a store, and it ended about a week before February 7th, when we opened the store.

Q. So took you approximately two weeks to come up with the name?

A. Yes.

Q. Now, do you recall who suggested these various names that are on the top of page 5?

[52] A. Honestly, I don't know whether – well, I don't know whether I came up with some of them, which ones who came up with, between me and my wife.

Q. All right.

A. As we were buying fixtures, running around hunting and everything else we just tossed names back and forth all the time.

Q. Did you try out any of these names on family or friends when you were – when you were thinking of a name for the shop?

A. No.

Q. And who thought of the name Victor's Secret; was it you or Mrs. Moseley?

A. I believe it was me.

Q. Was that one of the first names that you were considering, or was it like the last name and that was it?

A. I can't remember where it came in at. There was a ton of names. I mean this – the names that are there are not near all the names that we covered, and I just can't remember every name. I mean we had funny names and – just a long line of names.

Q. Were all these names off the top of [53] your heads, or were they – did you look at books, or did you look anywhere to get ideas, or –

A. Off the top of our head. Let's take a few minute break, if you don't mind.

MR. COLUCCI: Sure.

(REPORTER'S NOTE: AT THIS POINT A SHORT BREAK WAS TAKEN)

Q. Now, if you'll look at page 6 of your answers to interrogatory. In interrogatory number 13 we asked you to describe the circumstances and date on which you first learned about or first became aware of Victoria's Secret, and you have two parts to your answer: The first part is that you – first time you saw a commercial or catalog was this year, that is, when you signed this – in 1998 some time?

A. Yes.

Q. How was it that you happened to see a commercial or catalog?

A. Well, I seen the commercial on television, and that's the first time I'm aware of that Victoria's Secret has advertised on television; that's the first time I've seen that [54] commercial.

Q. Okay.

A. As far as the catalog goes, the first time I seen a Victoria's Secret catalog was after the response with Matt Lombard. He sent me a copy – he had faxed me a copy of their logo and everything, and then we called and requested a catalog.

Q. Okay. Now, can you describe the commercial that you saw? Do you remember what it was advertising?

A. Bras, I believe.

Q. Okay. Do you remember what brand, or –

A. No.

Q. And was this after you had opened your shop and named it Victor's Secret that you saw the commercial or was it before you opened your shop and you saw the commercial?

A. I believe it was after.

Q. And how long did you say you had been in retailing?

A. Approximately 15, 17 years.

Q. And you never heard of Victoria's Secret before that?

[55] A. No. I heard of them, that's in my answer, but I had never seen their catalog or commercial –

Q. Okay.

A. – up until this year.

Q. Okay. So when you say but somewhere through the years we had heard of it, you were aware of Victoria's Secret?

A. Yes.

Q. And did you know that they sold lingerie and intimate apparel?

A. Yes.

Q. How did you know that?

A. Just from general conversations with different people.

Q. Okay. But you never saw a commercial up until this year, correct?

A. Yes.

Q. And you never saw a catalog up until this year?

A. Yes.

Q. Have you ever been to a Victoria's Secret store?

A. No.

Q. Have you ever seen a Victoria's Secret [56] store?

A. No.

Q. So how had you heard of – you hear of Victoria's Secret?

A. Victoria's Secret, people have talked about it.

Q. Like who, like friends, relatives, or –

A. Friends, relatives, just general people, as everybody.

Q. Did you think, when you heard that, that that was close to the name Victor's Secret?

A. No.

Q. Did you believe, when you received the first letter from our office in February, that there was a reasonable basis for Victoria's Secret's concern about your use of Victor's Secret?

A. My personal belief, Victor and Victoria are two total different names. And to avoid any conflict or any confrontation or any problems we decided to split it up and make sure. That's why I had Matt fax us the letter – the - their logo and everything, to make sure we were totally different from them.

[57] Q. Okay. Now, one of the other names that you were thinking about, if you look at page 5 of your interrogatories, was – and this was answer to interrogatory 9 – you mention Adult Toys Are Us.

A. It was a joke.

Q Okay. I see.

A. So was Bump and Ugly.

Q. You are aware that there's a company that operates a chain Toys –

A. Toys are us, correct.

MR. PISACANO: Let him ask his question before you answer.

THE WITNESS: Okay.

Q. And I take it you've had no exposure or experiences involving company names or trademarks in all the time that you've been in the retailing business?

A. No.

Q. And no one's ever suggested to you in any way that your name was close to Victoria's Secret?

A. What do you mean? And how do you mean it?

Q. Well, any one of your customers ever [58] come in and kidded you about the fact that your name was similar to Victoria's Secret, or refer to Victoria's Secret in a conversation with you? Without reference to this lawsuit?

A. I've taken a lot of ribbing over the lawsuit.

Q. Okay. I understand that. But leave the lawsuit out of it. But has anybody, before the lawsuit was filed, actually indicated to you it sounds like Victoria's Secret or was close to Victoria's Secret?

A. If it has it was in – yeah, I would say yes.

Q. In jest, or in what way?

A. In jest.

Q. Has that happened frequently?

A. No.

MR. COLUCCI: Okay. I don't have any further questions. Thank you very much. Maybe Mr. Pisacano will have some questions for you.

[59] EXAMINATION

BY MR. PISACANO:

Q. Would you describe what you're wearing today?

A. Bluejeans, tennis shoes, T-shirt, and just a cover shirt.

Q. Do you have socks on?

A. Yes.

Q. What color are they?

A. White.

Q. Is that normally what you wear when you work in your store?

A. Yes.

MR. PISACANO: That's all I have.

MR. COLUCCI: No further questions. Thank you very much, Mr. Moseley.

WITNESS EXCUSED

* * *

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY

AT LOUISVILLE

V SECRET CATALOGUE, INC., VICTORIA'S SECRET STORES, INC. and VICTORIA'S SECRET CATALOGUE, INC. Plaintiffs	)	NO. 3:~~09~~-CV-395-S 98
VS.	)	(Filed Nov. 18, 1998)
VICTOR MOSELEY and CATHY MOSELEY d/b/a VICTOR'S LITTLE SECRET (formerly VICTOR'S SECRET) Defendants	)	

THE DEPOSITION OF CATHY MOSELEY

TAKEN BY THE PLAINTIFF

Elizabethtown, Kentucky

October 29th, 1998

TRIELOFF COURT REPORTING
Carl R. Trieloff
120 East Memorial Drive
Elizabethtown, KY 42701 (502) 737-2028

* * *

[6] Q. Now, do you remember how the name Victor's Secret came about?

A. Like my husband said, we just tossed names back and forth; that's one that popped up that fit the store.

Q. Now, do you remember whether it was you or he who came up with the name Victor's Secret? His testimony he said he did?

A. I think – I think he did.

Q. And when that name popped up did it signify to you or suggest to you any connection or association with Victoria's Secret?

A. No.

Q. You didn't think of Victoria's Secret when he mentioned Victor's Secret, if that's the way it happened?

A. No. Okay, um, because we weren't thinking along those lines.

Q. Now, I mean, you shop, don't you? Most women do.

A. Um-hm.

Q. And aren't you familiar with Victoria's Secret?

A. All honesty, I have only been in [7] Victoria's Secret once, and that was maybe five years ago. And it was kind of in one door and out the other.

Q. Okay. But you're familiar with the company?

A. I've heard of it.

Q. Correct. I mean, and when the name Victor's Secret came up didn't you say to him well, there's Victoria's Secret?

A. Not that I can recall.

Q. And you've never seen, prior to that name coming up, you never saw a Victoria's Secret catalog?

A. (Shaking head negatively).

MR. PISACANO: You need to –

A. Honestly, no.

Q. You don't have any friends that get these catalogs?

A. No. Um, maybe I've lived a sheltered life. I was the in-home housewife. I honestly did not get out a lot. No, I have never seen the catalog.

Q. Catalogs come to your home?

A. They didn't to mine.

Q. Okay. But you didn't have friends or [8] any one you knew that received the Victoria's Secret catalog?

A. In all honesty, not that I know of.

Q. And do you watch television?

A. Yes.

Q. You never saw a Victoria's Secret commercial before you selected this name?

A. No. In all honesty, this year is the first time I've ever seen a Victoria's Secret commercial on TV.

Q. Where do you shop? I mean, do you go to shopping malls, or –

A. Wal-Mart.

Q. Wal-Mart? Do you go down to Louisville to shop?

A. No.

Q. Where was the Victoria's Secret store that you said you were in five years ago; where was that located?

A. In Louisville. I was visiting my mom and we were going shopping and she said "oh, let's go through here".

Q. And do you read magazines?

A. Not that often.

Q. You never seen an advertisement in any [9] magazine for Victoria's Secret?

A. I might have in a magazine, you know, where subconsciously it stayed in the head, but don't focus on it.

Q. Do you read magazines like "Cosmopolitan"?

A. No.

Q. What magazines do you read?

A. "Readers Digest", sometimes "Better Homes and Gardens".

Q. Okay. Do you have any favorite TV programs that you watch?

A. Right now, no.

Q. Have you ever seen the TV program Veronica's Closet?

A. I think I might have watched it once.

Q. And what newspapers do you read?

A. The local.

Q. And you've never seen any advertisements in any local newspapers for Victoria's Secret merchandise?

A. Not that I can recall.

* * *

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY

V SECRET CATALOGUE, INC., VICTORIA'S SECRET STORES, INC. and VICTORIA'S SECRET CATALOGUE, INC. — PLAINTIFFS

vs. — NO. 3:98 CV-395-S

VICTOR MOSELEY and CATHY MOSELEY d/b/a VICTOR'S LITTLE SECRET (formerly VICTOR'S SECRET) — DEFENDANTS

DEFENDANTS ANSWERS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT

(Filed Nov. 2, 1998)

Defendants Victor Moseley and Cathy Moseley, hereinafter "Defendant", and for their Answers to Plaintiffs' First Set of Interrogatories, state as follows:

INTERROGATORIES

INTERROGATORY NO. 1

Identify the names and addresses of all businesses, other than Victor's Secret or Victor's Little Secret, which defendants own, either individually or jointly, or in which they have any controlling interest, and identify all documents referring or relating to such businesses.

ANSWER: Eastview Enterprises, (502) 862-9369 and De Best Paging, (502) 862-9369

INTERROGATORY NO. 2

Identify the goods and/or services on or in connection with which defendants have at any time used the name VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET and/or any variation thereof, and identify all documents referring or relating thereto.

ANSWER: Defendants sell novelty action clocks, patches, temporary tattoos, stuffed animals, coffee mugs, leather biker wallets, zippo lighters, diet formula, diet supplements, jigsaw puzzles, whyss, handcufs [sic], hosiery bubble machines, greeting cards, calendars, incense burners, car air fresheners, sunglasses, ball caps, jewelry, candles, lava lamps, blacklights, fiber optic lights, rock and roll prints, lingerie, pagers, candy, adult video tapes, adult novelties, t-shirts, etc.

INTERROGATORY NO. 3

Describe the circumstances surrounding defendants' decision to adopt the names VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET and/or any variation thereof, and identify all documents referring or relating thereto.

ANSWER: After deciding to open a store, we kept tossing names back and forth between us and somewhere in that process came the name Victor's Secret. About two weeks or so after we opened, I was contacted by mail from Matt Lombard about our name Victor's Secret. After discussing a name change to avoid any confrontation, I requested Matt to fax me a copy of their logo and trade name as I had never seen a Victoria's Secret catalog or been in one of their stores. After receiving the information,

we thought about changing the name to Victor's Precious Secrets which Matt felt would be fine because it now had another word in it. We later came up with the name Victor's Little Secret because of our adult novelty and gift room, which fit, and again Matt felt this would be satisfactory. Then we received a second letter from Victoria Secret's attorney dated March 20, 1998 with demands that I furnish photographs in order for them to consider my name acceptable. I felt I had gone far enough. I changed the name once, and made sure my sign and logo looked nothing like theirs.

INTERROGATORY NO. 4

Set forth the date(s) on which defendants first used the name VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET on or in connection with any goods and services, specifying each item of goods and describing each service rendered and the dates of first use thereof, and identify all documents referring or relating thereto.

ANSWER: On or around 1/26/98.

INTERROGATORY NO. 5

State in detail whether any investigation has been conducted by defendants, or anyone on behalf of the defendants, concerning plaintiffs, describe each such investigation, the date(s) conducted, and identify all documents referring or relating thereto.

ANSWER: We have no knowledge of any investigation.

INTERROGATORY NO. 6

State whether any trademark, trade name or corporate name search was conducted by defendants, or anyone on behalf of defendants' prior to defendants' adoption and use of the name VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET, and identify all documents referring or relating thereto.

ANSWER: We checked at the Hardin County Clerk's Office and no names close were recorded.

INTERROGATORY NO. 7

Identify all persons who were involved in, or participated in defendants' decision to adopt and use the names VICTOR'S SECRET and VICTOR'S LITTLE SECRET, and identify all documents referring or relating thereto.

ANSWER: Victor and Cathy Moseley. None.

INTERROGATORY NO. 8

Identify all persons, including, but not limited to, experts and attorneys, who were consulted, employed or retained by defendants and who provided defendants with any opinions or advice regarding defendants' adoption and use of the names VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET, and identify all documents referring or relating thereto.

ANSWER: None.

INTERROGATORY NO. 9

Identify any other names which were considered by defendants, or by others on behalf of the defendants, and rejected, during the process which resulted in the decision by defendants to adopt and use the name VICTOR'S SECRET and VICTOR'S LITTLE SECRET.

ANSWER: Pristine Pleasures, Romantic Encounters, Adult Toys Are Us, Secret Pleasures, Secret Moments, Bumpin Ugly and probably hundreds more we can't remember. No one else was involved in our name choice, [sic]

INTERROGATORY NO. 10

Identify each person employed by defendants and any outside agency which has been or is now responsible for:

(i) Marketing;

(i) Advertising and promotion; and

(iii) Bookkeeping and accounting;

with respect to the business of VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET and identify any and all documents referring or relating thereto.

ANSWER: None.

INTERROGATORY NO. 11

Identify all commercials, advertisements, brochures, catalogs and promotional materials, Internet web site(s) and/or other media advertising in which the names VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET appear(s), whether released or aired or proposed to be released or aired, and which were prepared by or for

defendants, and identify all documents referring or relating thereto.

ANSWER: These documents will be produced in a separate document production request.

INTERROGATORY NO. 12

Set forth for each calendar year from the date of first use of the name VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET, the total dollar amounts defendants have expended to date on advertising and promotion, and identify any and all documents referring or relating thereto.

ANSWER: Approximately $2,364.17 to date.

INTERROGATORY NO. 13

Describe the circumstances and date on which defendants first learned about or first became aware of VICTORIA'S SECRET.

ANSWER: The first time we ever saw a commercial or catalog was this year, but somewhere through the years we had heard of it.

INTERROGATORY NO. 14

Describe any and all instances in which any person or persons has/have commented on the association or connection between the names VICTOR'S SECRET and/or VICTOR'S LITTLE SECRET and VICTORIA'S SECRET, and identify each such person or persons, all persons having knowledge of, and/or directly or indirectly involved

in, any such instances, and all documents referring or relating thereto.

ANSWER: None.

INTERROGATORY NO. 15

Identify any objection, cease and desist letter or lawsuit alleging trademark, patent or copyright infringement made by any third party(ies) against defendants at any time, and identify any and all documents referring or relating thereto.

ANSWER: None.

INTERROGATORY NO. 16

Identify all persons defendants expect to call as expert witnesses at trial and, for each, state the subject matter on which each expert is expected to testify, and the substance of the facts and opinions to which each expert is expected to testify.

ANSWER: None at this time.

INTERROGATORY NO. 17

Identify all persons defendants expect to call as non-expert witnesses at trial and state each person's occupation, residence address and relationship to defendants and the subject matter on which each such witness is expected to testify.

ANSWER: Brian Walker, Radio D.J. and Program Director, Basix Communications, P. O. Box L, 406 South Mulberry, Elizabethtown, Kentucky 42701. Mr. Walker

was never confused with advertising; Chuck Carey and his wife, Fusion Technologies Inc., 2660 Stovall Road, Lebanon Jet, Kentucky 40150-9532. They were never confused and his wife had actually been a customer of Victoria's Secret.

INTERROGATORY NO. 18

Identify each person who participated in the preparation of defendants' responses to the foregoing interrogatories, specifying the interrogatory number to which each such person participated and who furnished any information in response thereto.

ANSWER: Victor Moseley and Cathy Moseley answered the questions together.

INTERROGATORY NO. 19

If the information furnished in response to the above Interrogatories 1 through 18 is not within the personal knowledge of the person answering the interrogatory, separately identify with respect to each interrogatory and subpart thereto each person to whom the information is a matter of personal knowledge.

ANSWER: Not applicable.

Respectfully submitted,

DON A. PISACANO
STITES & HARBISON
250 West Main Street, Suite 2300
Lexington, Kentucky 40507
Telephone: (606) 226-2300

and

JOHN E. SPAINHOUR
GIVHAN & SPAINHOUR
Doctors Alley & 3rd Street
P. O. Box 65
Shepherdsville, Kentucky 40165
Telephone: (502) 543-2218
COUNSEL FOR DEFENDANTS

I have hereby sworn to, under oath, that the information I have given in this document, is true and correct to the best of my knowledge and belief.

/s/ Victor D. Moseley
VICTOR MOSELEY

I have hereby sworn to, under oath, that the information I have given in this document, is true and correct to the best of my knowledge and belief.

/s/ Cathy Moseley
CATHY MOSELEY

STATE OF KENTUCKY)
COUNTY OF Hardin)

Subscribed and sworn to before me by Victor Moseley on this the 29th day of October, 1998.

My commission expires: Aug 13, 2001

/s/ Carl R. Trieloff
NOTARY PUBLIC,
STATE AT LARGE

STATE OF KENTUCKY)
COUNTY OF Hardin)

Subscribed and sworn to before me by Cathy Moseley on this the 29th day of October, 1998.

My commission expires: Aug 13, 2001

/s/ Carl R. Trieloff
NOTARY PUBLIC,
STATE AT LARGE

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served by first class U.S. Mail upon the following, on this the 29th day of October, 1998:

Redford H. Coleman, Esq.
2907 Ring Road
P. 0. Box 4030
Elizabethtown, Kentucky 42702

Frank J. Colucci, Esq.
Courtney W. Monahan, Esq.
W. Brant Mossop, Esq.
G. Mathew Lombard, Esq.
Colucci and Umans
670 White Plains Road
Scarsdale, NY 10583

/s/ Don Pisacano
COUNSEL FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

V Secret Catalogue, Inc.; Victoria's Secret Stores, Inc.; and Victoria's Secret Catalogue, Inc.,	:	Case No. 3:98 CV-395-S
Plaintiffs,	:	
v.	:	
Victor Moseley and Cathy Moseley, dba Victor's Little Secret (formerly Victor's Secret),	:	
Defendants.	:	

DEPOSITION OF TIMOTHY B. LYONS

Taken at The Limited, Inc.
Three Limited Parkway
Columbus, OH 43230
December 8, 1998
9:37 o'clock a.m.

* * *

[4] CROSS-EXAMINATION

BY MR. PISACANO:

Q. Would you please state your full name, sir?

A. Timothy B. Lyons, L-Y-O-N-S.

Q. Mr. Lyons, what is your present employment?

A. I am employed by Limited Service Corporation as vice president of tax.

Q. Can you describe what your duties and responsibilities are in that position?

A. I oversee The Limited, Inc. tax department which is responsible for compliance, planning for income taxes and sales tax.

Q. Anything else?

A. In my responsibilities?

Q. Yes, sir.

A. General business consultation with my boss, I guess, would be the balance of it.

Q. Who's your boss?

[5] A. Ken Gilman, G-I-L-M-A-N.

Q. What's his position?

A. Vice chairman.

* * *

[15] Q. Do you have knowledge of any confusion that may have existed or does exist between the store, Victor's Little Secret, and his products and Victoria's Secret and its products?

A. I am not aware of any actual confusion that has arisen.

Q. Do you have any evidence of any likely confusion that has existed or may exist regarding the use of Vic Moseley's name of Victor's Little Secret and –

MR. COLUCCI: I object. I'm sorry.

Q. – and Victoria's Secret?

MR. COLUCCI: Object to the form of the question.

A. Could you read the questions? I'm a [16] little confused.

(Record read back as requested.)

A. I mean, evidence of likelihood, again, is just visually looking at it. But beyond that, any objective evidence, no.

Q. When you say visually looking at it, what do you mean by that? The name?

A. Yes.

Q. Anything else other than the name?

A. No. Well, I mean, the type of store. It sells similar products, so that's –

Q. Anything else?

A. No.

* * *

Q. Are you aware that Victor's Little Secret palmed off or passed off any merchandise, business, or service as that of Victoria's Secret?

A. Well, it seems to me that they sell [17] similar products, and the name can be confusing. I don't know whether you'd call that palming off, but it would seem to me that that would be the intent of using a name so similar and a similar type of product.

Q. So again, other than selling a similar product under that particular name, Victor's Little Secret, you don't have any other evidence that Victor's Little Secret has palmed off or passed off any of its merchandise, business, or service as that of Victoria's Secret?

A. I'm not aware of any, no.

* * *

[31] Q. You mentioned that it's your understanding that Victor's Little Secret sells products that are similar to Victoria's Secret's products. Specifically, what are those products?

A. My knowledge comes from the summary that Mr. Colucci prepared. It was lingerie and, I guess, sexually oriented devices.

Q. What else?

A. That's all I recall.

Q. So if I understand your testimony, then, you sell a similar product of sexually oriented devices?

A. No. Lingerie, as a generic term, is generally what Victoria's Secret Stores deals with. [32] And I'm relating that to a similar product to the lingerie that I've mentioned there. Part of the objection is, of course, not only trading on the name that we've worked so hard to build up

over the years, but also the association with products we don't want our name associated with.

Q. Okay. But specific to my question about what products Victoria's Secret markets and sells that is similar to the products sold by Victor's Little Secret, is there anything else other than lingerie?

A. Not that I recall.

Q. And when you use the term "lingerie," define that for me.

A. Ladies' undergarments, sleepwear.

Q. Anything else?

A. I don't think so.

Q. You mentioned sleepwear. You're talking about ladies' sleepwear?

A. Yes.

Q. Do you sell any male products, products used by men?

A. We have over time. I don't know what the current mix is now. I am aware that they sold men's [33] boxer shorts at one time, men's robes. I don't know if those are items currently for sale.

Q. Who in your companies would have knowledge of the specific products offered for sale by Victoria's Secret?

A. It would be representatives of Victoria's Secret Stores and Victoria's Secret Catalogue.

Q. Do you know who in those companies, what area?

A. No. I don't know who specifically, no.

Q. Okay. Other than the name and the sale of lingerie, are you aware of any other similarities between the marketing and the sale of goods of Victor's Little Secret with that of Victoria's Secret?

A. Other than the name and similarity of product, no.

Q. And when I say product, I mean specifically lingerie.

A. Lingerie.

Q. Your answer is no?

A. I'm not aware of any, no.

Q. Is it the company's position that Victor's Little Secret is in direct competition with [34] Victoria's Secret as to the sale of lingerie?

A. I mean, to the extent that there are identical products, perhaps you could say that. I'm not aware that the products are identical either in terms of type or quality or anything else.

Q. That was my next question. What do you know about the product that is sold by Vic Moseley in his store other than its lingerie?

A. That's all I know.

Q. Do you know where it came from?

A. No.

Q. Do you know its quality?

A. No.

Q. Do you know the brand names?

A. No.

Q. Do you know the prices?

A. No.

Q. So you wouldn't know whether they're more or less expensive than what's offered by Victoria's Secret?

A. I would not know that.

* * *

[39] Do you have any knowledge or evidence that Victor's Little Secret sold goods under the name or the label "Victoria's Secret"?

A. I am not aware that they did that.

Q. Are you aware of any circumstances where Victor's Little Secret counterfeited any types of goods to pass them off as Victoria's Secret goods?

A. I am not aware of such an instance.

Q. Do you have any knowledge that the owners of Victor's Little Secret knew about the existence [40] of Victoria's Secret?

A. I have no such knowledge.

Q. Do you have any knowledge that the owners of Victor's Little Secret knew the types of goods that Victoria's Secret sells or markets?

A. I have no such knowledge.

Q. Do you have any knowledge that the owners of Victor's Little Secret knew or actually saw one of your advertisements or read one of your catalogues before opening their shop?

A. I have no such knowledge.

Q. You may have answered this fully before, and if you have, feel free to tell me that you've answered it fully before. But what evidence do you rely on to establish the claim that Victor's Little Secret blurs or tarnishes or dilutes the distinctiveness of your mark?

A. Could you read the question, please?

(Record read back as requested.)

A. I guess, too, one is a subjective evidence. Just seeing it, hearing it, to me as a layperson, implies that there's a blurring.

Q. Can I interrupt you? When you say "it," are you speaking just of the name?

[41] A. Yes.

Q. Okay. What else?

A. And then relying on advice of trademark counsel that these are the kinds of things that we need to take action against to ensure that we've properly protected the Victoria's Secret trade name and trademark.

Q. Anything else?

A. No.

* * *

[43] Q. Have you performed any calculations as to the sales that Victoria's Secret has lost as a result of Victor's Little Secret opening its store?

A. I have made no such calculations, no.

Q. Are you aware of any such calculations being done?

A. No, I'm not aware of any.

Q. Okay. Do you know if there are any sales made by Victor's Little Secret that were the result of Victor's Little Secret infringing on Victoria's Secret?

A. No, I'm not aware of any.

Q. Do you know of any Victoria's Secret customer that spent money in Victor's Little Secret store while under the impression that he or she was purchasing something from the Victoria's Secret line?

[44] A. I am not aware of any person.

* * *

[45] Q. Part of your complaint alleges that there [46] are items at Vic Moseley's store that are sold at prices comparable to those of Victoria's Secret. Are you aware or do you have any knowledge specific to that allegation?

A. I do not have any knowledge.

Q. Do you have any knowledge as to whether Vic Moseley sells his goods to the same class of purchasers as Victoria's Secret does?

A. I have no such knowledge.

Q. Do you have any knowledge that supports the claim in your complaint that Vic Moseley has done something that is likely to cause the public to believe that his goods are authorized, sponsored, or approved by Victoria's Secret other than the use of the name "Victor's Little Secret"?

A. I am not aware that he has taken such action.

Q. Are you aware of any act committed by Vic Moseley or his representatives that he has committed t. would indicate that his store is affiliated or connected with Victoria's Secret other than the use of the name?

A. I am not aware of any such action.

Q. As part of your complaint, you allege [47] that Mr. Moseley has falsely designated the origin of some goods. Do you have any knowledge as to that allegation?

A. I have no knowledge of that allegation.

MR. COLUCCI: That's other than the use of the name?

MR. PISACANO: Yes. I'm sorry.

Q. Other than the use of the name. And I guess you need to answer that.

A. I'm sorry. No.

Q. Other than the use of the name, do you have any knowledge or information that Victor's Little Secret has falsely described its goods?

A. I have no knowledge of such description.

Q. Do you have any knowledge of any profits that Victor's Little Secret may have realized as a result of its infringement upon Victoria's Secret?

A. I have no such knowledge.

Q. Do you have any reason to believe that Victoria's Secret has lost any sales or profits as a result of the business of Victor's Little Secret?

A. I cannot say that they have lost any profits.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

[Caption Omitted In Printing]

DEPOSITION OF JAMES J. McGINTY

Taken at The Limited, Inc.
Four Limited Parkway
Columbus, OH 43230
December 8, 1998
2:04 o'clock p.m.

* * *

[4] CROSS-EXAMINATION

BY MR. PISACANO:

Q. Would you state your full name, please?

A. Full name is James J. McGinty.

Q. Where are you employed, Mr. McGinty?

A. At Victoria's Secret Stores.

Q. What is your position?

A. Vice President and controller.

Q. What are your tasks and responsibilities in that position?

A. In the position, I'm responsible for all the accounting operations of Victoria's Secret, including inventory control, sales audit, accounts payable, payroll, shop control, as well as having the responsibility as legal liaison for the business.

Q. What is shop control?

A. It's the area that performs the goal setting tasks for the shop as well as management of shop expenses, budgeting, et cetera.

[5] Q. When you speak of shop, what are you speaking of? Each individual store?

A. Each individual store, right.

* * *

[24] Q. What do you know about the specific products that Mr. Moseley sells in his store?

A. Very little, other than there is some lingerie and that there are some adult products. I don't know any specifics beyond that.

Q. How did you come to learn that he sells lingerie?

A. I learned about the products from Frank's office.

[25] Q. Do you know the prices of the lingerie that Mr. Moseley sells?

A. No, I don't.

Q. Do you have any knowledge as to whether his prices are higher or lower than what Victoria's Secret charges for a similar product?

A. No knowledge.

Q. Do you have any knowledge about the quality of the goods that Mr. Moseley sells in the area of lingerie or intimate apparel?

A. I do not.

* * *

[35] Q. Who are your direct competitors to Victoria's Secret Stores?

A. Department stores, we typically consider competitors of Victoria's Secret Stores. There are other lingerie businesses out there; i.e., Frederick's of Hollywood would be competition.

Q. Any others?

A. None that come to mind.

Q. Okay. When you say the word "department stores," what department stores – obviously there are high end and low end department stores. What department stores are you speaking of?

A. What I'm typically referring to are the better department stores.

Q. As a non-shopper, tell me.

A. Bloomingdale's, Nordstrom's, Macy's, Sak's.

[36] Q. Okay. Do you believe that your customers think it's significant that they are purchasing a product from Victoria's Secret?

A. Yes, I do.

Q. How would you rate the quality of the goods you sell? And for purposes of this question, the goods that we mentioned earlier that you've asserted that Victor's Little Secret sells the same types of things.

A. Uh-huh.

Q. How would you compare the quality of your goods to these other department stores and Frederick's? Same quality, higher quality, lower quality?

A. I would say, for the most part, our goods would be higher quality than –

Q. Than the department store goods?

A. Than the department stores or Frederick's.

Q. Is it fair to say that your pricing is concomitant to – I won't even say that – higher as well?

A. Today, yes. Today. Historically, not necessarily. But the last couple of years, yes.

[37] Q. Does Victoria's Secret have a reputation for high quality goods?

A. Yes, they do.

Q. I may have asked you this before, but you don't know where Mr. Moseley obtains the goods that he sells in his store, correct?

A. That's correct.

Q. And you don't know whether they're higher or lower quality than yours, correct?

A. No, I don't.

* * *

[40] Q. Victoria's Secret has made a claim that Victor's Little Secret's actions blur, tarnish, or dilute the distinctiveness of your mark.

A. Uh-huh.

MR. COLUCCI: You have to answer audibly, Jim.

A. Was that a question?

Q. No, but I'm getting to it.

A. Okay.

Q. To what do you refer when you talk about distinctiveness? Is it only the name?

A. When we talk about distinctiveness, we talk about the name, the way it's presented, the way it's signed, the look in addition to the name.

Q. Is there anything else about Victor's Little Secret's business that applies to this allegation of blurring, tarnishing, or diluting, other than the way they portray the name and the name itself?

A. No. It's the portrayal and the name.

Q. And if I could elaborate on that, the portrayal of the name – and I think you talked a little bit about this before. It may have been your [41] predecessor deponent. Is it your contention that the lettering is the same or similar?

A. The contention is that the lettering is similar and when the term "little" was added to "Victor's Secret," I guess the font of the "little" was very tiny relative to the "Victor's" and "secret."

Q. You did say that before; didn't you?

A. Yes.

* * *

[42] Q. Have you calculated the sales that Victoria's Secret has lost as a result of Victor's Little Secret opening its store?

A. No, we have not.

Q. Do you know if there are any losses as a [43] result of Victor's Little Secret opening his store?

A. None that have been measured, anyway.

Q. Do you know if there are any sales made by Victor's Little Secret that were the result of Victor's Little Secret infringing upon Victoria's Secret?

A. I don't know that for a fact, no.

Q. Do you know of any Victoria's Secret customer that spent money in a Victor's Little Secret store while under the impression that he or she was purchasing a product from Victoria's Secret?

A. No. We've had no report of that.

Q. At some point, Victor's Secret in this lawsuit changed the name of the entity to Victor's Little Secret.

A. Uh-huh.

Q. Are you aware of that?

A. Yes, I am.

Q. What personal knowledge do you have of that?

A. My only knowledge is that they did it and – my understanding is that they did it in the hopes that that would be an acceptable solution.

Q. Was that change communicated to you?

[44] A. Yes, it was.

Q. Was that communicated to you by Mr. Colucci's firm?

A. Yes, it was.

Q. What was your response to the name change, if anything?

A. That that was not an acceptable solution.

Q. Did you convey any acceptable solution at that time?

A. The solution that we are looking for was a complete and distinct name change.

* * *

[50] Q. Do you have any specific evidence or information to support your claim that Vic Moseley, doing business as Victor's Little Secret, in opening his shop has eroded or blurred or tarnished the [51] distinctiveness of your trademark?

A. No specific knowledge.

* * *

Q. Forgive me. I may have asked you this. Do you have any knowledge of profits that Victor's Little Secret has realized as a result of its infringement against Victoria's Secret?

A. No, I have no knowledge. And no, you didn't ask me that one.

Q. Have you performed any calculations [52] regarding any profits that Victor's Little Secret may have realized as a result of this infringement?

A. No, I have not.

Q. Okay. Do you know of the existence of any calculations?

A. No, I do not.

Q. Do you have any reason to believe that Victor's Little Secret has realized profits as a result of infringing on Victoria's Secret?

A. Other than the fact that he is an ongoing business entity, no.

Q. Do you have any knowledge that Victor's Little Secret realized profits directly as a result of the infringement upon Victoria's Secret?

A. No, I don't.

Q. What specific monetary damages has Victoria's Secret suffered as a result of Mr. Moseley's opening of Victor's Little Secret in Elizabethtown?

A. I haven't calculated the monetary damages.

Q. Are you aware of any monetary damages today?

A. No, I am not.

* * *

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK
TRIAL AND APPEAL BOARD

[Caption Omitted In Printing]

DEPOSITION OF JILL H. BERAUD

Taken at Victoria's
Secret Stores
Four Limited Parkway
Columbus, Ohio
December 14, 1998
1:05 o'clock p.m.

* * *

[4] [Q.] Would you give me your full name, please?

A. Jill Helene Beraud.

Q. What is your present position with – I'm going to start with The Limited.

A. Vice-president of marketing, Victoria's [5] Secret Stores.

Q. Do you have any involvement with – other than your position with Victoria's Secret Stores do you have any other involvement with The Limited or any of its subsidiaries?

A. Not really.

Q. What does the position of vice-president of marketing entail, what kind of responsibilities?

A. I'm responsible for managing the image and the brand for the stores, including responsibility for all advertising, in-store marketing, credit card marketing.

Q. What is credit card marketing?

A. We have a Victoria's Secret credit card. It's my responsibility to manage that program.

Q. Is that credit card, is that something that is used solely for purchasing with Victoria's Secret Stores?

A. And the catalogue.

* * *

[31] Q. Is there any – and I'll ask you this in an open question. I don't want to put words in your mouth, but is it your opinion that Victor's Little Secret's goods are in direct competition to Victoria's Secret goods?

A. They sell lingerie, right?

Q. I'm asking you.

A. If they sell lingerie, then they're competition.

Q. Anything else that you're aware of that Victor's Little Secret may be in a competitive area of which you're selling?

[32] A. No.

Q. Is the basis of your answer the advertisement that we talked about earlier?

A. That's where I saw that they sell lingerie, correct.

Q. Do you have any other knowledge other than the advertisement that this company sells lingerie?

A. No.

Q. Or intimate aapparel [sic]?

A. No.

Q. Do you know anything about the brand image of Victor's Little Secret?

A. No, other than they seem to be trading off our brand image.

Q. Do you know if they use any particular color schemes, logos, things of that nature in their presentation of their products?

A. The only thing I saw in the advertisement looked exactly like our logo.

MR. PISACANO: Frank, I'm sorry, can I see that ad again? Thanks.

Q. The advertisement you talked about that involved the company called Victor's Secret, since [33] that time Mr. Moseley has changed the name to Victor's Little Secret, have you seen his new logo or new sign design?

A. I haven't seen it. I've heard about it.

Q. What have you heard about it?

A. That the little is very little.

Q. What else have you heard about it?

A. That's all I've heard.

Q. Is it your impression – strike that. Who told you that?

A. Frank did.

Q. How did you learn that?

A. Frank told me.

Q. And with the exception of anything that your attorney may have told you did you find out from anybody else that the little was very little?

A. No.

Q. Do you know where it's located in the logo? Do you know what the present logo looks like?

A. That is the only thing I have seen.

Q. Do you have any knowledge of whether Victoria's Secret sale prices are similar to Victor's Little Secret sale prices?

[34] A. I have no knowledge of that at all.

Q. And I think you already testified you're not familiar with any other goods that may be similar other than the lingerie; correct?

A. Correct.

Q. You mentioned that your company sells a premium product. Is it fair to say that it's at the high end of quality?

A. Yes.

Q. Is it also at the high end of price?

A. Not the highest. There are plenty of other intimate apparel companies that have a higher price, but we're a premium brand with a premium price.

* * *

[39] Q. Do all the products that you sell in your stores have the Victoria's Secret brand name on them?

A. Yes.

Q. Do you sell anything that doesn't have the Victoria's Secret brand name on it?

A. No, no.

* * *

[40] Q. I'd like to talk to you a little bit about your customers, your target customers. How would you describe your average customer?

A. Our target customers are 18 to 35. Our average is roughly 26 years old. And it's generally somebody who likes intimate apparel, likes to spend money on fashion.

Q. Discriminating? Are they a very discriminating customer?

A. I don't know what you mean by discriminating.

Q. Would the normal customer going in to [41] Victoria's Secret deem it significant that it was a Victoria's Secret product that they were buying?

A. Oh, absolutely.

Q. That's sort of what I meant by discriminating. Are they sophisticated compared to the average U.S. customer?

A. Well, I can't comment on sophistication versus the average customer, but they come in – they're buying Victoria's Secret.

Q. How would you compare your typical customer with the typical customer at K-Mart?

A. I don't know K-Mart's customer.

Q. How about Target?

A. I don't know Target's customers.

Q. How about Sears?

A. I don't know the profile of any of these customers.

Q. How about Sachs Fifth Avenue?

A. Again, I only know what our customer's profile is. I don't know any of these other.

Q. You're not prepared to tell me whether or not you think a Victoria's Secret customer is more discriminating or more sophisticated than somebody who shops at K-Mart?

[42] A. I can give you my opinion.

Q. What would your opinion be?

A. I think they have a higher taste level, if that's what you mean.

* * *

Q. Do you have any knowledge of Victor's Little Secret selling goods under the name or label of Victoria's Secret?

A. Not to my knowledge.

Q. Do you have any knowledge of any acts committed by Victor's Little Secret's employees or representatives that in any way demonstrates that [43] Victor's Little

Secret was pawning off its goods as Victoria's Secret goods?

A. Only that ad.

Q. Anything else?

A. No.

Q. Do you have any knowledge of any acts committed by Victor's Little Secret employees or representatives that in any way demonstrates that Victor's Little Secret was counterfeiting Victoria's Secret goods?

A. Only this ad.

Q. Do you have any knowledge that the owners of Victor's Little Secret knew about the existence of Victoria's Secret?

A. I don't know how they couldn't have.

Q. Do you have any specific knowledge that they did?

A. No.

Q. Do you have any knowledge that the owners of Victor's Little Secret knew the types of goods that Victoria's Secret sells or markets?

A. I don't know how they could not have, but I don't know specifically anything about them or what they know.

[44] Q. Part of your complaint alleges that Victor's Little Secret through its actions blur or tarnish or dilute the distinctiveness of your trademark. What facts do you rely on to support that allegation that some act of Victor's

Little Secret either blurs, tarnishes or dilutes the distinctiveness of Victoria's Secret trademark?

A. The only fact I have is that ad.

* * *

[45] Q. Have you calculated the sales Victoria's Secret has lost as a result of Victor's Little Secret opening its door?

A. No.

Q. Are you aware of any such losses?

A. We haven't calculated it.

Q. So is the answer to that no?

A. There could be.

Q. Do you know if there are any losses?

A. I do not, no.

Q. Do you know if there are any sales made by Victor's Little Secret that were the result of Victor's Little Secret infringing on Victoria's Secret?

A. Anything that relates to that ad.

Q. Other than the ad?

[46] A. Anything that – I mean, their name is trading off our name. So I would say every sale that they make.

Q. Do you know of any Victoria's Secret customer that spent money in Victor's Little Secret store while under the impression he or she was purchasing something from Victoria's Secret?

A. No.

Q. I mentioned this earlier. At some point Vic Moseley changed the name of his store from Victor's Secret to Victor's Little Secret. Did you have any involvement in that name change or do you know anything about it at all?

A. I know it was done. I haven't been involved in it.

Q. One of the answers to your interrogatories that were provided indicates that you are an individual that has knowledge concerning the business of Victoria's Secret and also knowledge of the likelihood of confusion caused by Victor's Little Secret's use of an identical and/or confusingly similar mark?

A. Uh-huh.

Q. Do you have any knowledge of that [47] allegation other than what you've already testified to as to the name and the advertisement?

A. It's all based on the name and the advertisement.

Q. Do you sell lava lamps?

A. Excuse me?

Q. Do you sell lava lamps?

A. No.

Q. Do you sell incense burners?

A. No.

Q. Do you sell rock 'n roll posters?

A. No.

Q. Do you sell jewelry?

A. We have.

Q. What kind of jewelry did you sell?

A. All Victoria's Secret jewelry.

Q. Does it have the name on it?

A. It had initials. It was all signature items.

Q. But part of the allegations that you've made involve infringement upon distinctive features of Victoria's Secret. Other than what you've already testified to regarding the name that you saw on the advertisement, is there anything else that is [48] a distinctive feature of Victoria's Secret that you believe Victor's Little Secret infringes upon?

A. It's really the name, the logo and the product that they're selling.

Q. I may have asked you this. Do you have any knowledge of anything that Victor's Little Secret sells other than what you read in the name – excuse me, in the advertisement?

A. Only what's in the advertising.

Q. Part of the allegation is that Victor's Little Secret sells items at comparable prices to Victoria's Secret. Do you have any knowledge about that allegation?

A. I don't know their pricing.

Q. Part of the allegation is that Victor's Little Secret sells to a similar class of purchasers. Do you have any knowledge about that allegation?

A. I don't know who their customers are.

Q. Are you aware of any surveys or canvassing that has been done to determine what the class of customers are that go in to Victor's Little Secret?

A. No.

[49] Q. Other than what we already talked about can you – is there anything else about the class of purchaser which is a Victoria's Secret purchaser other than what we talked about

A. I didn't understand your question.

Q. Can you define – is there any more to what your knowledge is of the class of purchaser for Victoria's Secret other than what you've already talked about? Is there anything more to this class of purchaser that represents a Victoria's Secret purchaser other than what you've already talked about?

A. I've given you the essence.

Q. Can you think of anything else that you have not already stated?

A. No.

Q. What knowledge do you possess that supports the claim that Vic Moseley doing business as Victor's Little Secret has done something that is likely to cause the public to believe that his goods are authorized, sponsored or approved by Victoria's Secret?

A. Just that ad.

Q. Do you have any knowledge of any specific [50] acts committed by anyone at Victor's Little Secret that

would cause the public to believe that Victor's Little Secret is affiliated or connected with Victoria's Secrets?

A. Only that ad.

Q. What specific knowledge do you possess of any false designation of origins of goods sold by Victor's Little Secret?

A. I don't know anything about that other than that ad.

Q. What knowledge do you have or what information do you possess that Victor's Little Secret has falsely described its goods?

A. I only know that ad.

Q. Other than what you've already testified to regarding the advertisement do you have any other specific knowledge or information to support the claim that Vic Moseley in opening his shop has eroded or blurred or tarnished the distinctiveness of your trademark?

A. He's using our trademark. He's using our name. That's what I know.

Q. Do you have any knowledge of any profits that Victor's Little Secret has realized as a result [51] of its infringement upon Victoria's Secret?

A. Whatever profits they make is an infringement.

* * *

VICTOR'S LITTLE SECRET INVENTORY LIST

Candles: assorted cones, including black light sensitive & rainbow
Assorted large and small squares, including black light sensitive and rainbow
Assorted large and small cylinders, including black light sensitive and rainbow
Assorted large and small pyramids, including black light sensitive and rainbow
Assorted large and small aromatherapy candles
Assorted novelty candles:
- Wizards, skulls, mushroom
- Assorted novelty large and small fairies, crystal ball, explosive
- Assorted novelty aliens, birthday, horny little devil
- Assorted novelty smiley faces, pressed flower, intertwined Lovers

Black light sensitive paint (assorted colors)
Glow in the dark moon, stars, and planets (assorted sizes)
Candle lanterns
Gift bags
Doodle pads
Zippo lighters, including gift sets
Sunglasses
Assorted gift wrap
Assorted jewelry, including:
- Assorted sizes and colors captive bead rings
- Acrylic barbells (assorted colors & sizes)
- Glow in the dark barbells, circulars, beads, etc.
- Captive dice rings (assorted sizes and colors)
- Cat's eye rings (assorted sizes and colors)
- Niobium twist rings
- Niobium captive rings
- Surgical steel twist rings
- Belly knockers
- Helix rings
- Question marks

Sterling silver beads w/charms
14 ct. gold barbells, nose stones, captive beads, etc.
Assorted stone, Indian, and bangle chains
Assorted anklets, bracelets, bangles
U of L beer stein
Assorted patches with sayings and pictures
Assorted buttons with sayings
Dice
Dyetie, black light fabric hangings
Fitness gloves
Assorted cigarette cases
Assorted biker leather wallets with chains
Feathers
Animated action clocks
AA, AAA, C, D batteries
Blacklight lighters
Bullet lighters
Bullet Ky. rings
Aromatherapy mitts
Assorted bubble bath
Assorted bath/ shower gel
Assorted sterling silver rings – turtles with moveable parts, 2 piece puzzle rings, happy and sad mood – faces, moon & stars, various stones for ladies, men's abalone and silver
Assorted stone circle rings
Weaved rings
Pava dolphin and sterling silver rings
Semi-precious stone earrings
Assorted silver hoop earrings
Black onyx charm
Black hematite necklaces with charms
Men's Halloween G-strings
Zippo lighter fluid, flints, and wicks
Assorted stockings, seamed and unseamed
Assorted stuffed animals
Assorted ladies' robes
Assorted boas

Assorted shoes with 5" heels
Assorted thi-hi boots with 5" heels
Leather jackets
Leather chaps
Assorted Lycra one-size dresses
Assorted garter belts
Assorted men's thongs
Assorted men's briefs
Men's boxers
Women's thongs
Assorted gloves for ladies
Collar and cuff sets
Leather hats
Assorted baseball hats with messages
Assorted T-shirts with messages
Assorted leather outfits
Assorted dresses – long and short
Assorted lingerie, with plus sizes
Assorted cotton tops, shorts, long pants, gowns, chemises
Various types of lighting:
Various black light bulbs
Sunder balls
Small lava lights
Large lava lights
Assorted fiber optic flower lights
Mirrored party ball kits
Fountain fiber optic light
Assorted flashing traffic lights
Strobe lights
Fiber optic UFO
Disco lights
Assorted colors beacon lights
Laser lights with 18 preset patterns
Assorted bone boxes
Assorted horn boxes
Assorted romantic gift sets
Feather body dusters
Comedy phone tapes

Pharmacy:
- Chromium Herbal Formula 500
- Snore Away
- Golden Seal Root
- 357 Magnum
- Yohimbe Extract
- Panax ginseng extract with ginkgo biloba extract

Patchwork leather wallets
Leather snuff case
Assorted leather key chains
Assorted men's belt buckles
Cigarette cases
Disposable lighters
Assorted abalone, mother of pearl, and Peruvian earrings
Fantasy jigsaw puzzles – 500-1500 pieces
Assorted party games
Assorted windchimes
Incense burners, sticks, and cones
Assorted car air fresheners
Patchouli perfume oil
Relighting birthday candles
Soapstone boxes
Soapstone elephant incense
Assorted wood boxes
Assorted shot glasses
Assorted guy posters
Assorted rock and roll posters – hand drawn in pencil
Assorted coffee mugs with sayings

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

V SECRET CATALOGUE, INC. VICTORIA'S SECRET STORES, INC. AND VICTORIA'S SECRET CATALOGUE, INC. PLAINTIFF	NO. 3:98 CV-395-S
v.	
VICTOR MOSELEY AND CATHY MOSELEY D/B/A VICTOR'S LITTLE SECRET (FORMERLY VICTOR'S SECRET) DEFENDANTS	**AFFIDAVIT OF VICTOR MOSELEY**

The Affiant, Victor Moseley, after being duly sworn, states as follows:

1. I am the owner of Victor's Little Secret.

2. The average customer base or market for Victor's Little Secret is 50% male/50% female.

3. The average age of my customers is 30-60 years old.

4. The number of sales of lingerie, hosiery, thongs, and high heel shoes is approximately 5% of the total number of sales on a given day. Approximately 30% of all sales of lingerie are in the "plus" sizes of 2X, 3X, and 4X.

5. I named the store Victor's Little Secret because at the time I was putting my plans together, I did not want

my ~~present~~ [previous /s/ VM] employer finding out. Second, it also represents the locked adult section of my store. That is now what Victor's Little Secret is.

Further the Affiant sayeth not.

/s/ Victor D. Moseley
VICTOR MOSELEY

STATE OF KENTUCKY
COUNTY OF HARDIN

Subscribed and sworn to before me this the 14 day of April, 1999, by Victor Moseley.

My commission expires: March 16, 2002

/s/ [Illegible]
NOTARY PUBLIC,
STATE OF KENTUCKY